TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 48

LOUIS H. PINK, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, PETITIONER,

vs.

A. A. HIGHWAY EXPRESS, INC., H. A. ADAMS, TRADING AS ADAMS TRANSFER CO., H. L. BASS, AS BASS BUS LINE, ET AL.

WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR CERTIORARI FILED APRIL 9, 1941.

CERTIORARI GRANTED MAY 26, 1941.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No.

LOUIS H. PINK, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, PETITIONER,

vs.

A. A. A. HIGHWAY EXPRESS, INC., H. A. ADAMS, TRADING AS ADAMS TRANSFER CO., H. L. BASS, AS BASS BUS LINE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 31, 1941.

[fol. 1] **IN SUPERIOR COURT OF FULTON COUNTY**

BILL OF EXCEPTIONS—Filed September 17, 1940

Be It Remembered that at the July Term, 1940, of the Superior Court of Fulton County, there came on to be heard before the Honorable Paul S. Etheridge, Judge of said Court then presiding, the case of Louis H. Pink, Superintendent of Insurance of the State of New York, versus A. A. A. Highway Express, Inc. and others, being Case No. 127387 in said Court, on the demurrers of the defendants to the plaintiff's petition as amended.

Be It Further Remembered that after hearing argument of Counsel, the Court, on the 22d day of August, 1940, entered an order and judgment sustaining defendants' demurrers and dismissing said suit, which order was amended and supplemented on August 23, 1940, said order and judgment being, in part, in the following language:

"* * * it is considered, ordered, and adjudged that the petition as amended fails to set forth a cause of action, it being the judgment of the Court that said petition fails to make out a case of liability for assessment against the several defendants. The general demurrers are therefore sustained, and the plaintiff's petition is dismissed."

To this ruling, order and judgment of the court, as originally entered and as amended, the plaintiff then and there excepted and now excepts, and assigns said ruling, order [fol. 2] and judgment as error and says that the court erred in sustaining the defendants' general demurrers upon the ground that the said ruling, order and judgment were contrary to law, and insists that said demurrers should have been overruled.

And now comes the plaintiff in said case, Louis H. Pink, Superintendent of Insurance of the State of New York, and names himself as plaintiff-in-error in this bill of exceptions, and names the following parties as defendants-in-error in this bill of exceptions:

A. A. A. Highway Express, Inc.
Service Coach Line, Inc.
H. A. Adams, trading as Adams Transfer Co.
East and West Motor Lines, Inc.
H. L. Bass, as Bass Bus Line.

Roy H. Reagin.
Georgia Motor Express, Inc.
S. S. Sale, Sale Transfer Co.
Southeastern Stages, Inc.
Everready Cab Company.
J. H. Booker, d/b/a Savannah Beach Line and/or Atlantic Stages.
Fletcher T. Kaylor, d/b/a Kaylor Transfer Co.
J. T. Murray, d/b/a Georgia Alabama Coach Line.
Kaler Produce Company.
Cox Bros. Undertaking Co., Inc.
Atlanta Macon Motor Express, Inc.
Southeastern Motor Lines, Inc., and/or Cedartown Bus Line.
J. Russell, d/b/a Russell Transfer Co.
Continental Carriers, Inc.
Bateman Company, Inc.
Downie Brothers Circus.
Kinnett Odom Company, Inc.
Southern Stages, Inc.
Weathers Bros. Transfer Co., Inc.

Within sixty days from the date of the aforesaid judgment, the Court not having adjourned within thirty days from the organization and opening of court for said July term, 1940, plaintiff-in-error presents this bill of exceptions to the Honorable Paul S. Etheridge, Judge of said Court, who presided in said cause, and prays that the same be certified to the Supreme Court of Georgia, that the errors [fol. 3] herein complained of may be corrected.

Plaintiff-in-error specifies as material to a clear understanding of the errors complained of the following portions of the record, to-wit:

(1) The original petition of the plaintiff, omitting process and filing.

(2) Amendment to plaintiff's petition, allowed June 21, 1940.

(3) Amendment to plaintiff's petition, allowed July 25, 1940.

(4) Amendment to plaintiff's petition, allowed August 14, 1940.

(5) Amendment to plaintiff's petition, setting up copy of form of policy, allowed August 14, 1940, filed August 26, 1940.

(6) The general demurrers of Service Coach Line, Inc. filed October 24, 1939, omitting paragraphs 4 and 5.

(7) The general demurrers of H. A. Adams, filed October 30, 1939, omitting paragraphs 3 to 15, inclusive.

(8) The general demurrers of A. A. A. Highway Express, Inc., filed Nov. 6, 1939, omitting paragraphs 5 and 6.

(9) The general demurrers of East & West Motor Lines, Inc., filed November 6, 1939, omitting paragraphs 5 and 6.

(10) The general demurrer of H. L. Bass, filed November 6, 1939.

(11) The general demurrers of Roy R. Reagin, Georgia Motor Express, Inc., S. S. Sale, and Southeastern Stages, Inc., filed November 4, 1939.

[fol. 4] (12) The general demurrers of Eveready Cab Co., filed Nov. 6, 1939, omitting paragraphs 3 through 15 inclusive.

(13) The general demurrer of J. A. Booker, filed November 6, 1939.

(14) The general demurrer of Fletcher T. Kaylor, filed November 8, 1939.

(15) The general demurrers of J. F. Murray, filed November 9, 1939, omitting paragraphs 2 to 11, inclusive.

(16) The general demurrers of Kaler Produce Co.; Cox Bros. Undertakers; Atlanta-Macon Motor Express, and Southeastern Motor Lines, filed November 29, 1939, omitting paragraph 11.

(17) The general demurrers of J. Russell, filed November 28, 1939.

(18) The general demurrers of Continental Carriers, filed November 30, 1939, omitting paragraph 11.

(19) The general demurrer of Weathers Bros. Transfer Co., Inc., filed November 30, 1939.

(20) Demurrers of Bateman Company, Inc., Downie Brothers Circus, Kinnett-Odom Company, Inc., and South-

ern Stages, Inc., filed December 14, 1939, omitting paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20.

(21) Additional demurrer of H. L. Bass, filed December 27, 1939, omitting paragraph 4.

(22) Additional demurrer of J. Russell, filed August 14, 1940.

(23) Additional demurrer of Kaler Produce Company, Cox Brothers Undertakers, Atlanta-Macon Motor Express, Inc., Southeastern Motor Lines, Inc., Continental Carriers, filed August 13, 1940.

[fol. 5] (24) Additional demurrer of Bateman Company, Inc., Downie Brothers Circus, Kinnett-Odom Company, Inc. and Southern Stages, Inc., filed August 10, 1940.

(25) The order of the Court sustaining the demurrers of the defendants and dismissing plaintiff's petition, dated August 22, 1940, and amended August 23, 1940.

Plaintiff shows that the Supreme Court has jurisdiction of this cause for the reason that it is an equitable action, and for the further reason that it involves the construction of the Constitution of the United States.

Plaintiff-in-error respectfully presents this bill of exceptions.

Powell, Goldstein, Frazer & Murphy. Elliott Goldstein, Attorneys for Plaintiff-in-Error, 1130 C. & S. Bank Building, Atlanta, Georgia.

[fol. 6] ORDER

I hereby certify that the foregoing bill of exceptions is true and specifies all of the record material to a clear understanding of the errors complained of. The Clerk of the Superior Court of Fulton County is ordered to make up a complete copy of the portions of the record specified in the bill of exceptions and certify the same as such, and transmit the same to the next term of the Supreme Court of Georgia, that the errors complained of may be considered and corrected.

This 17 day of September, 1940.

(Signed) Paul S. Etheridge, Judge S. C. A. C.

Minutes 197 page 461.

[fol. 7] Service of the within bill of exceptions acknowledged; copy received. This — day of September, 1940.

Reynolds & Brandon by R. J. Reynolds, Jr., Attorneys for A. A. A. Highway Express, Inc.; East & West Motor Lines, Inc., Defendants in Error.

Sept. 18.

Howell & Post, Attorneys for Roy R. Reagin, Georgia Motor Express, Inc., S. S. Sale, d/b/a Sale Transfer Company, and Southeastern Stages, Inc., Defendants in Error. R. Earl Camp, Attorney for Service Coach Line, Inc., Defendant in Error.

Sept. 17.

Joseph E. Webb & P. J. Smith by Frank Hooper, Jr., Attorneys for H. A. Adams, trading as Adams Transfer Co., Defendant in Error. Carlisle Cobb, Thos. R. R. Cobb & G. N. Bynum, Attorneys for H. L. Bass, trading as Bass Bus Line, Defendant in Error.

Sept. 17

Erwin & Nix, Frank & Hooper, Jr., Attorneys for Eveready Cab Company, Defendant in Error. James C. Howard, Jr.

Sept. 17.

Bright, Brannen & Howard, Attorneys for J. H. Booker, d/b/a Savannah Beach Line and/or Atlantic Stages, Defendant in Error. Boykin & Boykin, E. S., Attorneys for Fletcher T. Kaylor, d/b/a
[fol. 8] Kaylor Transfer Co., Defendant in Error.

Sept. 18.

Bryan, Richardson and Mobley, Attorneys for J. T. Murray, d/b/a Georgia Alabama Coach Line, Defendant in Error.

Sept. 19.

Hooper, Hooper & Miller, Attorneys for Kaler Produce Company, Cox Brothers Undertakers, Atlanta-

Macon Motor Express, Inc.; Southeastern Motor Lines, Inc. and or Cedartown Bus Line; Continental Carriers, Inc., Defendants in Error. J. L. Flemister, Attorney for Weathers Bros. Transfer Co., Inc., Defendant in Error.

Sept. 17.

Earl Norman, Attorney for J. Russell, d/b/a Russell Transfer Co., Defendant in Error.

Sept. 17.

Frank Hooper, Jr., for Martin, Martin & Snow, and Jones, Jones & Sparks, Attorneys for Bateman Company, Inc.; Downie Brothers Circus; Kinnett Odom Company, Inc.; Southern Stages, Inc., Defendants in Error.

Sept. 17.

Hirsch, Smith & Kilpatrick, A. S. Clay, J. E. Gortatowsky, Attorneys for M. & A. Motor Freight Lines Incorporated.

Sept. 17.

[fol. 9] [File endorsement omitted.]

Clerk's Certificate to foregoing paper omitted in printing.

[fols. 10-11] IN SUPREME COURT OF GEORGIA

No. 13549

LOUIS H. PINK, Superintendent of Insurance of the State of New York, Plaintiff in Error,

vs.

A. A. A. HIGHWAY EXPRESS, INC. et al., Defendants in Error

AMENDMENT TO BILL OF EXCEPTIONS—Filed October 30, 1940

To the Honorable The Supreme Court of Georgia:

Now comes Louis H. Pink, superintendent of insurance of the State of New York, plaintiff in error, and amends his bill of exceptions as follows:

By adding to the list of defendants in error, and naming as a defendant in error, M. & A. Motor Freight Lines, Inc.

Plaintiff in error shows that the foregoing defendant in error was omitted from the bill of exceptions by inadvertence, but that service was acknowledged for the aforesaid M. & A. Motor Freight Lines, Inc. by its attorneys of record.

Respectfully submitted, Powell, Goldstein, Frazer & Murphy, Elliott Goldstein, Attorneys for Plaintiff in Error.

[File endorsement omitted.]

[fol. 12] In Superior Court of Fulton County

Petition—Filed October 13, 1939

To the Superior Court of Said County:

The petition of Louis H. Pink, Superintendent of Insurance of the State of New York, would show:

1. That one or more of the named defendants are residents of Fulton County, and that all of the defendants are residents of the State of Georgia.

2. The Auto Cab Mutual Indemnity Company was incorporated under Article 10-B of the Insurance Law of the State of New York on May 26, 1932 as a mutual automobile casualty insurance company. With the approval of the Insurance Department of the State of New York, its name was changed on February 21, 1933, to Auto Mutual Indemnity Company (hereinafter called the Company).

3. On the application of the Superintendent of Insurance of the State of New York, an order was made by the Supreme Court of the State of New York placing the Company in rehabilitation pursuant to Article XI of the Insurance Law of the State of New York. Said order was made, entered and filed in the office of the Clerk of New York County on November 12, 1937.

4. The Company being insolvent, it was placed in liquidation on that ground by an order of the Supreme Court of the State of New York made, entered and filed in the

[fol. 13] office of the Clerk of New York County on November 24, 1937. Said liquidation proceedings are entitled "In the matter of Liquidation of the Auto Mutual Indemnity Company," and are still pending.

5. Pursuant to Section 422 of the Insurance Law of the State of New York, on February 4, 1938, which was within one year from the date of the entry of the orders of rehabilitation and liquidation, the Superintendent of Insurance filed in said proceedings a report setting forth the reasonable value of the assets of the Company, its probable liabilities, and the probable necessary assessment to pay all allowed claims in full.

6. Upon the basis of said report, pursuant to Section 422 of the Insurance Law of the State of New York, an order was made on February 7, 1938 at Special Term, Part II of the Supreme Court of the State of New York, held in the County of New York, Honorable Bernard L. Sheintag, presiding, directing that an assessment of forty (40%) per cent of premiums earned during the preceding year be levied against all members of the Company, against whom an assessment might have been levied on November 10, 1937 (the date of the commencement of the proceedings against the Company). Said order was duly filed in the office of the Clerk of New York County on February 8, 1938.

7. The Superintendent thereupon computed the amount of assessment due from each policy, and, pursuant to Section 432 of the Insurance Law of the State of New York, computed the amount of indebtedness of each member to [fol. 14] the Company apart from the indebtedness for assessment. These computations were incorporated as Exhibit "E" in a second and supplemental report with regard to the assessment accompanied by a return which, among other things, referred to and made a part thereof the report previously filed, upon which the order of February 7, 1938, was made.

8. On the basis of the supplemental report an order was made August 12, 1938, at Special Term, Part II of the Supreme Court of the State of New York, which, together with the petition, report and exhibits of the Superintendent of Insurance, was duly filed in the office of the Clerk of New York County. Said order directed each member during the year prior to November 10, 1937, to pay the amount as-

sessed against him to the Superintendent of Insurance on or before September 19, 1938, and to pay such other amounts for which they were indebted as appeared from said Exhibit "E".

9. Said order further directed that, failing to make such payments, the members were to show cause on September 29, 1938, at Special Term, Part I of the Supreme Court of the State of New York why they should not be held liable to pay such assessments, together with costs as provided by Section 422 of the Insurance Law of the State of New York, and further directed that they show cause why they should not be held liable to pay any other indebtedness which they might owe the Superintendent of Insurance, and why the Superintendent should not have judgment therefor.

10. Pursuant to Section 422 of the Insurance Law of the [fol. 15] State of New York, notice of this order was mailed to all of the members of the Company, including each of the defendants herein.

11. None of the defendants appeared to show cause why they should not be held liable to pay the aforesaid sums, nor have they made payment as directed by the said order.

12. All of the defendants were policyholders and members of the Company during the year prior to November 10, 1937.

13. At the time each of the defendants purchased his policy and became a member of the Auto Mutual Indemnity Company there was in force a statute of the State of New York, which, under the statutes and Court decisions of New York, became a part of his contract and binding upon him, to-wit, Section 346 of the Insurance Law of the State of New York which provides:

Section 346. The Corporation shall in its by-laws and policies fix the contingent mutual liability of the members for the payment of losses and expenses not provided for by its admitted assets; but such contingent liability of a member shall not be less than an amount equal to twice the amount of, and in addition to, the cash premium provided for in the policy, except that a corporation which has amended its charter to provide for the transaction of additional kinds of insurance may amend its by-laws to provide that the contingent mutual liability of a member shall not be less than

an amount equal to and in addition to, the cash premium provided for in the policy. * * *

[fol. 16] All assessments, whether levied by the board of directors, by the Superintendent of Insurance in the liquidation of the corporation, or otherwise, shall be for no greater amount than that specified in the policy or by-laws.

14. The names of the defendants herein, their residence, the number of their policies, the period for which they are liable to assessment, the premium earned during that period, the amount of assessment for which they are liable, the other indebtedness due the Superintendent and their total indebtedness are as follows:

fol. 17]

Defendant	Policy Number	Assessment Period From	Assessment Period To	Earned Premium	Amount of Assessment	Other Indebtedness Premiums	Total
A. A. A. Highway Express, Inc. 532 14th St., N. W. Atlanta, Fulton County, Georgia	AC28543	11/10/36	12/ 7/36	$ 182 51	$ 73 03	$	$
	AC42060	12/ 7/36	4/ 2/37	861 11	344 45		417 48
Adams Transfer Co. Athens, Clarke County, Georgia.	AC32089	11/10/36	6/30/37	305 09	122 03		122 03
Atlanta-Macon Motor Express, Inc., Jackson, Butts County, Ga.	AC41958	11/10/36	10/30/37	1295 97	518 39		518 39
Bass Bus Line (H. L. Bass), 184 E Clayton St., Athens, Clarke County, Georgia	AC34561	11/10/36	7/20/37	1049 87	419 94	2 12	
	AC68082	7/20/37	11/10/37	611 73	244 69	596 29	1263 04
	AC54765	4/26/36	11/24/37	14 52	5 81		5 81
Bateman Co., Inc., 336 Poplar St., Macon, Bibb County, Georgia	AC20397	11/10/36	5/29/37	48 79	19 51		
	AC20398	11/10/36	5/29/37	498 46	199 39		
	AC20656	11/10/36	12/30/36	3 13	1 26		
	AC27194	11/10/36	3/13/37	7 87	3 15		
	AC34668	11/10/36	9/28/37	188 02	75 22		
	AC41779	12/30/36	11/10/37	20 85	8 34		
	AC54861	5/29/37	11/10/37	460 76	184 30		
	AC68146	9/28/37	11/10/37	35 41	14 16		505 33
Bibb Transportation & Baggage, Co., Inc. 552 23 St., Macon, Bibb County, Georgia	AC54462	4/ 3/37	7/20/37	3265 69	1306 28		1306 28

fol. 18]

J. A. Booker, d/b/a Savannah Beach & Bus Line and/or Atlantic Stages, 111 Bull Street, Savannah, Chatham County, Ga.	AC32055	11/10/36	3/ 3/37	509 15	203 66		203 66
J. A. Booker 111 Bull Street, Savannah, Ga.	AC32057	11/10/36	6/25/37	14 92	5 97		5 97

Defendant	Policy Number	Assessment Period From	Assessment Period To	Earned Premium	Amount of Assessment	Other Indebtedness Premiums	Total
Continental Carriers, Inc.	AC34541	11/10/36	7/14/37	319.80	127.92		
215 Courtland St., N. E.,	AC68226	7/14/37	11/10/37	245.91	98.36	71.37	
Atlanta, Fulton County, Georgia	AC34545	11/10/36	7/14/37	171.21	68.49		366.14
Cox Bros. Undertaking Co., Inc.	AC31941	11/10/36	5/ 9/37	157.86	63.14		
206 Auburn Ave., N. E.,	AC54737	5/ 9/37	10/22/37	308.01	123.20	103.54	289.88
Atlanta, Fulton County, Georgia							
Downie Bros. Circus,	AC41785	11/16/36	4/12/37	20.63	8.25		
Macon, Bibb County, Georgia	AC54448	4/12/37	11/ 5/37	2363.53	945.41	245.00	
	Binder No. 1036	3/29/37	4/12/37	7.47	2.99		1201.65
East & West Motor Lines, 20-14th Street,	AC31968	11/10/36	5/16/37	320.32	128.13		128.13
Atlanta, Fulton County, Georgia							
Eveready Cab. Co., Clayton St.,	AC34748	11/10/36	3/15/37	616.50	246.60		246.60
Athens, Clarke County, Georgia							
[fol. 19]							
Georgia Motor Express, 10 Krog Street,	AC41935	11/10/36	7/ 1/37	2851.70	1146.68	963.85	2104.53
Atlanta, Georgia							
Hitchcock, Wilcott T., d/b/a Hitchcock Motor Express and Fuller Brush Company,	AC49322	2/15/37	11/24/37	1004.62	401.85		401.85
14 Alexander St., N. W.							
Atlanta, Fulton County, Georgia							
Independent Transfer Co.,	AC68079	6/30/37	11/10/37	221.90	88.76	106.04	
Brunswick, Glynn County, Ga.	AC32072	11/10/36	6/30/37	384.02	153.60		348.40
Kaylor, Fletcher T., d/b/a Kaylor Transfer Company,	AC54764	5/ 1/37	11/24/37	630.39	252.16		
Carrollton, Carroll County, Ga.	AC31931	11/10/36	5/ 1/37	539.91	215.96		468.12
Kaylor Produce Company,	AC28529	11/10/36	12/ 2/36	80.16	32.06		
129 Central Ave.,	AC42025	12/ 2/36	11/10/37	1021.58	408.63	90.61	531.30
Atlanta, Fulton County, Georgia							

Kinnett Odom Company, Inc., 6th Street, Macon, Bibb County, Georgia	AC42211	12/18/36	11/24/37	716.89	286.76		286.76
[fol. 20]							
Leonard, N. H., d/b/a Albany Transfer Co., 316-7th Street, Albany, Dougherty County, Ga.	AC41635	11/10/36	9/10/37	259.11	103.64	21.98	
	AC68419	9/21/37	11/10/37	37.67	15.07	114.00	254.69
Maner's Transfer Company, Rome, Floyd County, Georgia	AC41666	11/10/36	9/20/37	6228.33	2491.34		2491.34
Marchman's Drive Your Self, Inc. and/or Dime Taxi Co & Yellow Cabs, Columbus, Muscogee County, Ga.	AC54001	1/10/37	3/ 6/37	393.33	157.33		
	AC 1001	11/10/36	1/10/37	436.13	174.45		331.78
Mendes, Joe, Bay Street, Brunswick, Glynn County, Ga.	AC28589	11/10/36	12/26/36	31.50	12.60		12.60
The Joe Mendes Co., Inc., Brunswick, Glynn County, Ga.	AC41434	2/11/37	11/24/37	218.61	87.44		
	AC54341	5/17/37	11/24/37	144.95	57.98		
	AC54342	6/ 3/37	11/24/37	25.46	10.18		155.60
Montgomery & Atlanta Motor Freight Lines, Inc. and/or H. V. Benton, 436 Whitehall St., S. W., Atlanta, Fulton County, Georgia	AC29403	11/10/36	2/15/37	547.45	218.98		218.98
[fol. 21]							
Montgomery & Atlanta Motor Freight Lines, Inc. and/or J. L. Hightower and/or H. V. Benton, 436 Whitehall St., S. W. Atlanta, Fulton County, Georgia	AC42185	2/15/37	9/15/37	1596.69	638.68		638.68
Morris, S. J., 1275 Holderness St., S. W., Atlanta, Fulton County, Georgia	AC29614	11/10/36	2/20/37	82.67	32.83		
	AC54005	2/20/37	9/20/37	390.00	156.00		188.83
Murray, J. F., d/b/a Georgia Atabama Coach Line Arlington, Calhoun County, Ga.	AC41673	11/10/36	9/25/37	408.88	163.56	34.34	
	AC68387	9/25/37	11/10/37	53.67	21.47	70.00	289.37

Defendant	Policy Number	Assessment Period From	Assessment Period To	Earned Premium	Amount of Assessment	Other Indebtedness Premiums	Total
E. H. Pace Bus Line, Jackson, Butts County, Georgia	AC42052	12/14/36	11/24/37	310 83	124 33	30 69	155 02
Roy R. Reagin, 337 Whitehall St., Atlanta, Fulton County, Georgia	AC29481 AC54092	11/10/36 3/ 7/37	3/ 7/37 4/10/37	608 95 159 37	243 58 63 75		307 33
J. B. Reed, Proprietor, Safety Cab Company, 520 Second Ave., Macon, Bibb County, Georgia	AC34664	11/10/36	3/ 6/37	1053 69	421 48		421 48
[fol. 22]							
J. Russell and/or Russell Transfer Company Washington, Wilkes County, Ga.	AC34743	11/10/36	4/16/37	1190 02	476 01		476 01
S. S. Sale, d/b/a Sale Transfer Company, 1602 Fenwick St. Augusta, Richmond County, Ga.	AC41633	11/10/36	10/ 4/37	916 01	366 40		366 40
Service Coach Lines, Inc., Dublin, Laurens County, Georgia	AC28544 AC28549 AC42042	11/10/36 11/10/36 12/ 9/36	12/ 9/36 12/ 9/36 11/10/37	82 63 31 03 1225 07	33 06 12 41 490 02	13 81	549 30
Southeastern Motor Lines, Inc., and/or Cedartown Bus Line, Carrollton, Carroll County, Ga.	AC34439 AC68241	11/10/36 8/ 8/37	8/ 8/37 11/ 8/37	1473 80 502 84	589 52 201 14	12 96	803 62
Southeastern Stages, Inc., Augusta, Richmond County, Ga.	AC32085	11/10/36	4/15/37	3988 41	1595 36		1595 36
Southern Stages, Inc., Macon, Bibb County, Georgia	AC32097	11/10/36	6/21/37	2844 04	1137 62		1137 62
Weathers Bros. Transfer Co., Inc. and/or A.A.A. Van System, Augusta, Richmond County, Ga.	AC42054	11/10/36	10/ 1/37	956 08	382 43	137 76	520 19

[fol. 23] 15. As will appear from the detailed and itemized statement contained in the preceding paragraph, the defendants residing in Fulton County and the amount for which judgment is claimed against them are as follows:

A. A. A. Highway Express, Inc. 532 - 14th St., N. W. Atlanta, Georgia.	$417.48
Continental Carriers, Inc. 215 Courtland Street, N. E. Atlanta, Georgia.	366.14
Cox Bros. Undertaking Co. Inc. 206 Auburn Avenue, N. E. Atlanta, Georgia.	289.88
East & West Motor Lines, 20 - 14th Street, Atlanta, Georgia.	128.13
Hitchcock, Wilcott T. d b a Hitchcock Motor Express and Fuller Brush Company 14 Alexander St., N. W. Atlanta, Georgia.	401.85
Kaylor Produce Company 129 Central Avenue Atlanta, Georgia.	531.30
Montgomery & Atlanta Motor Freight Lines, Inc. 13 Delta Place, Atlanta, Georgia.	857.66
[fol. 24] S. J. Morris, 1275 Holderness St., S. W. Atlanta, Georgia.	188.83
Roy R. Reagin 237 Whitehall St. Atlanta, Georgia.	307.33
Georgia Motor Express, Inc. 10 Krog St. Atlanta, Georgia.	2104.53

16. The defendants residing outside Fulton County and the amounts for which judgment is claimed against them are as follows:

Bibb County

Bateman Co. Inc. 336 Poplar St. Macon, Georgia.	$505.33

Bibb Transportation & Baggage Co. Inc. 552 Second St. Macon, Georgia.	1306.28
Wm. M. Moore & Co., a partnership d/b/a Downie Bros. Circus, Macon, Georgia.	1201.65
Kinnett Odom Company, Inc. 6th Street, Macon, Georgia.	286.76
[fol. 25] J. B. Reed, Proprietor Safety Cab Company, 520 Second St. Macon, Georgia.	421.48
Southern Stages, Inc. Macon, Georgia.	1137.62

Clarke County

Adams Transfer Company, a Corporation Athens, Georgia.	$122.03
Bass Bus Line (H. L. Bass) 184 E. Clayton St. Athens, Georgia.	1268.85
Eveready Cab Company, a Corporation Clayton Street, Athens, Georgia.	246.60

Butts County

Atlanta-Macon Motor Express, Inc. Jackson, Georgia.	518.39
E. H. Pace Bus Line, a Corporation Jackson, Georgia.	155.02

Chatham County

J. A. Booker d/b/a Savannah Beach & Bus Line and/or Atlantic Stages, 111 Bull Street Savannah, Georgia.	$209.63

[fol. 26] Calhoun County

J. F. Murray d/b/a Georgia Alabama Coach Line, Arlington, Georgia.	$289.37

Carroll County

Fletcher T. Kaylor d/b/a Kaylor Transfer Company Carrollton, Georgia.	$468.12
Southeastern Motor Lines, Inc. &/or Cedartown Bus Line Carrollton, Georgia.	803.62

Dougherty County

N. H. Leonard d/b/a Albany Transfer Company 316 Seventh Street, Albany, Georgia.	$254.69

Floyd County

Maner's Transfer Company, a Corporation, Rome, Georgia.	$2491.34

Glynn County

Independent Transfer Company, a Corporation, Brunswick, Georgia.	$348.40
[fol. 27] The Joe Mendes Company, Inc. Brunswick, Georgia.	168.20

Laurens County

Service Coach Lines, Inc. Dublin, Georgia.	$549.30

Muscogee County

Marchman's Drive Your Self, Inc. and/or Dime Taxi Co. & Yellow Cabs Columbus, Georgia.	$331.78

Richmond County

S. S. Sale, d/b/a Sale Transfer Company 1002 Fenwich Street, Augusta, Georgia.	$366.40
Weathers Bros. Transfer Co. Inc.,	

And/or A. A. A. Van System
Augusta, Georgia. 520.19
Southeastern Stages, Inc.
Augusta, Georgia. 1595.36

Wilkes County

J. Russell
d/b/a Russell Transfer Company,
Washington, Georgia. $476.01

[fol. 28] Wherefore, petitioner prays:

(a) That this petition be filed and that process do issue requiring each and every defendant to be and appear at the next term of this Court to answer petitioner's complaint.

(b) That second originals do issue directed to all and singular the Sheriffs of this State and particularly the Sheriffs of the Counties in which the particular defendants reside, said second originals to be issued for each and every defendant residing outside the County of Fulton and to be transmitted to the Sheriffs of the respective counties for service upon said respective defendants.

(c) That petitioner have judgment for principal, interest and costs.

Powell, Goldstein, Frazer & Murphy. Elliott Goldstein, Attorneys for Louis H. Pink, Superintendent of Insurance of the State of New York, 1120 C. & S. Bank Building, Atlanta, Georgia.

[File endorsement omitted.]

[fol. 29] IN SUPERIOR COURT OF FULTON COUNTY

No. 127,387

LOUIS H. PINK, Superintendent of Insurance of the State of New York, Plaintiff,

vs.

A. A. A. HIGHWAY EXPRESS, INC. et al., Defendants

AMENDMENT TO PLAINTIFF'S PETITION—Filed June 21, 1940

Now comes the plaintiff, and by leave of the court first had, amends the petition heretofore filed by him in the following particulars, to-wit:

1

By adding to said petition a new paragraph to be numbered "15" as follows:

15. Except as to the amount claimed against each of the defendants, the claims asserted herein are identical in character, viz., the liability to assessment pro rata in order to create a fund so that claims of creditors against this insolvent company may be paid.

This action, therefore, presents a common right to be established by the plaintiff against the several defendants named in said petition, and it is proper that a court of equity determine the whole matter in one action. By so doing a multiplicity of actions will be avoided, speedy and effectual relief will be granted and the fund raised by the assessments for the payment of the debts due creditors will not be diminished by unnecessary costs or delayed by separate adjudications of the common questions pending between the parties.

Wherefore, plaintiff prays that this his amendment be allowed and that this court, as a court of equity, take jurisdiction of the cause, determine the common question of law and fact herein involved and the several liability of each of the defendants, and that it do render its decree or decrees [fol. 30] accordingly.

Powell, Goldstein, Frazer & Murphy. Elliott Goldstein, Attorneys for Plaintiff.

Duly sworn to by M. F. Goldstein, jurat omitted in printing.

ORDER

The foregoing amendment allowed and ordered filed subject to demurrer.

This 21st day of June, 1940.

Paul S. Etheridge, Judge S. C. A. C.

[File endorsement omitted.]

[fol. 31] IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

AMENDMENT TO PLAINTIFF'S PETITION—Filed July 25, 1940

Now comes the plaintiff, Louis H. Pink, superintendent of insurance of the State of New York, and with leave of court first had, amends his petition heretofore filed in the following respects:

1

By adding to paragraph 2 of said petition the following:

"All provisions of charter and amendment relevant to the issues in this case are attached hereto as Exhibit "A," with leave of reference prayed."

2

By adding to paragraph 3 of said petition *as* following:

"All sections of the aforesaid article XI relevant to the issues in this case are attached hereto as exhibit "B," and made a part hereof by reference. All of the aforesaid order relevant to the issues in this case is attached hereto as Exhibit "C," and made a part hereof by reference."

3

By adding to paragraph 4 of said petition the following:

"All of the aforesaid order relevant to the issues in this case is attached hereto as exhibit "D," and made a part hereof by reference."

4

By adding to paragraph 5 of said petition the following:

[fol. 32] "The aforesaid report being quite voluminous, it is not set out as an exhibit to this petition, but will be introduced into evidence at the trial of this cause."

5

By adding to paragraph 6 of said petition the following:

"Said order is attached hereto as exhibit "E," and made a part hereof by reference."

6

By adding to paragraph 7 of said petition the following:

"The references in the aforesaid exhibit "E" to each of the defendants herein have been incorporated in this petition as paragraph 14 hereof."

7

By adding to paragraph 9 of said petition the following:

"Said order is attached hereto as exhibit "E," and made a part hereof by reference."

8

By adding to paragraph 11 of said petition the following:

"The court therefore entered an order on November 17, 1938, confirming the liability of the defendants to pay the assessment, and to pay other indebtedness, pursuant to section 423 of the insurance law of the State of New York, and granting judgment in accordance with section 422 and section 423 of the insurance law, as more fully set out in the order. All of said order relevant to the issues in this cause are attached hereto as exhibit "G," and made a part hereof by reference."

9

By striking paragraph 12 of said petition, and inserting in lieu thereof the following:

[fol. 33] "All of the defendants were policyholders of the company during some portion of the year prior to November 10, 1937, as shown by paragraph 14. A copy of the policy issued to each of the defendants containing all of the material portions thereof is attached hereto as exhibit "H," and made a part hereof by reference."

a. The policies of each of the defendants provided on the back thereof the following:

"Notice to Policyholders

1. The insured is hereby notified that by virtue of this policy he is a member of the Auto Mutual Indemnity Company and is entitled to vote either in person or by proxy at any and all meetings of said company.

3. The contingent liability of the named insured under this policy shall be limited to one year from the expiration or cancellation hereof and shall not exceed the limits provided by the insurance law of the State of New York.

b. The by-laws of the company provided that:

Article I

Powers

Section 1. The corporate powers of the Auto Mutual Indemnity Company shall be the insurance of persons (including trustees, partnerships, and associations), corporations and joint stock companies on the mutual plan against any or all of the liability specified in article III of the certificate of incorporation.

Article II

Members

Section 1. The members of the corporation shall be the policyholders herein. When any member ceases to be a policy holder, he shall cease at the same time to be a member of the corporation.

Sec. 2. A corporation, partnership, association or joint [fol. 34] stock company may become a member of this corporation and may authorize any person to represent it therein and such representative shall have all the rights of an individual member.

c. The charter of the company provided in article IV thereof that the members of the corporation shall be the policyholders therein, as appears from exhibit "A" to this petition.

d. It is the law of New York that every person who accepts a policy of insurance in a mutual insurance company thereby becomes a member thereof."

10

By adding to paragraph 13 of said petition the following:

"a. Pursuant to the provisions of the aforesaid section, the board of directors provided in the by-laws of the company that: "The Board of Directors shall make an assess-

ment upon the members of the corporation when the cash funds of the corporation are less than the required reserves for unearned premiums, losses and expenses. The contingent mutual liability of the members for the payment of losses and expenses not provided for by the corporation, shall not be less than an amount equal to twice the amount of, in addition to, the cash premiums written in the policy. If the corporation is not possessed of cash funds above its unearned premium sufficient for the payment incurred losses and expenses, as estimated or determined, it shall make an assessment for the amount needed to pay such losses and expenses upon the members liable to assessment therefor, in proportion to their several liability. Every member shall be liable to pay and shall pay his proportionate part of any assessment which may be laid by the corporation in accordance with the law and his contract, covering any deficiency (excess of liabilities over admitted assets) if he is notified [fol. 35] of such assessment within one year after the expiration or cancellation of his policy. Each member's share of the deficiency for which an assessment is made shall be determined by applying to the premium earned on the member's policy during the period to be covered by the assessment the ratio of the total deficiency to the total premiums earned during such periods upon all policies subject to assessment."

"b. It is the law of New York that the aforesaid section 346 compels the company to fix the contingent mutual liability of the members; and that failure to mention the liability to assessment in the policies or by-laws does not release policyholders from liability to assessment, but results in their liability being fixed in accordance with section 346 of the New York insurance law.

"c. It is the law of New York that every person who was a member of a mutual insurance company at any time within the twelve months prior to the date of the commencement of the rehabilitation or liquidation proceedings against the company is liable to assessment in accordance with section 346 of the New York insurance law.

"d. It is the law of New York that the laws of that State govern the rights, liabilities and duties on liquidation of policyholders in mutual insurance companies incorporated and liquidated in that State."

Wherefore, plaintiff prays that this his amendment be allowed and ordered filed.

Elliott Goldstein. Powell, Goldstein, Frazer & Murphy, Attorneys for Plaintiff.

[fol. 36] EXHIBIT "A"

Certificate of Incorporation of Auto Cab Mutual Indemnity Company

We, the undersigned, all being natural persons of full age, and at least two-thirds of us being citizens of the United States, and at least a majority of us being citizens and residents of this state, do hereby certify and declare that it is our intention to form, and we do hereby associate together to form, a mutual insurance corporation, pursuant to Article 10B of the Insurance Law of the State of New York, being Chapter 28 of the Consolidated Laws, and the acts amendatory thereof and supplementary thereto, in particular Chapter 13 of the Laws of 1916, for the purpose of making the kinds of insurance specified in Article 10B; and that the following is a copy of the charter proposed to be adopted by us as the charter of said Corporation:

Charter of Auto Cab Mutual Indemnity Company

Article I

The name of this corporation is Auto Cab Mutual Indemnity Company.

Article II

The place where this corporation shall be located, and where it shall have its principal business offices, is in the City of New York, County of New York, and State of New York, and it shall have power to conduct its business wherever authorized by law.

[fol. 37] Article III

The kinds of business to be undertaken by this Corporation and the insurance it shall have authority to make are as follows:

Insurance upon or appertaining to automobile, whether stationary or being operated under their own power, and wheresoever they may be, as follows:

(a) Against loss or damage resulting from accident to, or injury suffered by, any person, and for which the person insured is liable; (b) against loss by burglary or theft or both of such hazards; (c) Against loss or damage to automobiles (except loss or damage by fire or while being transported in any conveyance by land or water), including loss by legal liability for damage to property resulting from the maintenance and use of automobiles.

Article IV

The members of this corporation shall be the policy holders therein, and when any member ceases to be a policy holder, he shall cease at the same time to be a member of the corporation.

Article V

The mode and manner in which the corporate powers of this corporation shall be exercised are through a Board of Directors and through such officers and agents as such Board shall empower.

* * * * * * *

State of New York

Insurance Department, Albany

George S. Van Schaick, Superintendent of Insurance.

February 21, 1933.

* * * * * * *

[fol. 38] I Do Hereby Further Certify that said corporation has filed a certificate under the provisions of Section 40 of the General Corporation Law to effect a change of name from its present title "Auto Cab Mutual Indemnity Company," to that of "Auto Mutual Indemnity Company," and approval is hereby given to such proposed change of corporate title under Section 40 of the General Corporation Law, and

* * * * * * *

In Witness Whereof, I have hereunto set my hand and affixed the official seal of this Department at the City of Albany, New York, the day and year first above written.

George S. Van Schaick, Superintendent of Insurance, by Thomas J. Cullen, Deputy Superintendent. (Seal.)

[fol. 39] EXHIBIT "B"

New York Insurance Law

Chapter 28 of the Consolidated Laws

§ 400. Application of Article; Definitions. 1. This article shall apply to all corporations, associations, societies, orders, partnerships, and individuals to which any article of this chapter is applicable, or which are subject to examination or supervision under any section of this chapter, or which are doing or attempting to do or representing that they are doing the business of insurance in this state, or which are in process of organization for the purpose of or intending to do such business therein, anything as to any such corporations, associations, societies, orders, partnerships, or individuals provided in this chapter or elsewhere in the laws of the state to the contrary notwithstanding.

2. (a) The word "insurer" as used in this article includes all of the above named corporations, associations, societies, orders, partnerships and individuals. (b) The word "superintendent" as used in this article refers to the superintendent of insurance. (c) The word "assets" as used in this article includes all deposits and funds of a special or trust nature.

§ 401. Grounds for Rehabilitation of Domestic Insurer. The superintendent may apply under this article for an order directing him to rehabilitate a domestic insurer upon any one or more of the following grounds; that such insurer (a) is insolvent; * * * (e) is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to the public; * * * (1) has consented through a majority of its directors, stockholders, or members; * * *.

§ 402. Order of Rehabilitation; Termination. At any time the superintendent shall deem that further efforts to rehabilitate such insurer would be futile, he may apply to the court under this article for an order of liquidation.

§ 403. Grounds for Liquidation of Domestic Insurer. The superintendent may apply under this article, for an order, directing him to liquidate the business of a domestic insurer upon any one or more of the grounds specified in section four hundred and one of this chapter, regardless of whether or not there has been a prior order directing him to rehabilitate such insurer.

§ 404. Order of Liquidation; Rights and Liabilities. 1. An order to liquidate the business of a domestic insurer shall direct the superintendent and/or his successors in office forthwith to take possession of the property of such insurer and to liquidate the business of the same and to deal with the property and business of such insurer in their own names as superintendents or in the name of the insurer as the court or justice before whom such order is returnable [fol. 40] may direct, and to give notice to all creditors who may have claims against such insurers to present the same.

2. The superintendent and/or his successors shall be vested by operation of law with the title to all of the property, contracts and rights of action of such insurer as of the date of the order so directing them to liquidate. The filing or recording of such order in any record office of the state shall impart the same notice that a deed, bill of sale or other evidence of title duly filed or recorded by such insurer would have imparted. The rights and liabilities of any such insurer and of its creditors, policyholders, stockholders, members and/or all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date of the entry of the order directing the liquidation of such insurer in the office of the clerk of the county where such insurer had its principal office for the transaction of business upon the date of the institution of proceedings under this article. Provided, however, that the right of claimants holding contingent claims on said date to share in an insolvent estate shall be determined by section four hundred and twenty-five of this chapter.

§ 408. Commencement of a Proceeding. The superintendent, the attorney-general representing him, shall, com-

mence any proceeding under this article by an application to the supreme court, or to any justice thereof, in the judicial district in which the principal office of the insurer involved is located, for an order directing such insurer to show cause why the superintendent should not have the relief prayed for. On the return of such order to show cause, and after a full hearing, which shall be held by the court or justice without delay, such court, or justice shall either deny the application or grant the same together with such other relief as the nature of the case and the interests of policyholders, creditors, stockholders, members, and/or the public may require.

§ 420. Set-offs. 1. In all cases of mutual debts or mutual credits between the insurer and another person, such credits and debts shall be set off and the balance only shall be allowed or paid.

2. No set-off shall be allowed in favor of any such person, however, where (a) the obligation of the insurer to such person would not then entitle him to share as a claimant in the assets of such insurer, or (b) the obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as a set-off, or (c) the obligation of such person is to pay an assessment levied against the members of a mutual insurer or to pay a balance upon a subscription to the capital stock of a stock corporation insurer.

§ 422. Levy of Assessment; Determination of Liability of Members Thereof. 1. Within one year from the date of the entry, on or after the first day of January, nineteen hundred thirty-four, of an order of rehabilitation or liquidation of a domestic mutual insurer in the office of the clerk of the county in which ~~such~~ insurer had its principal office, [fol. 41] the superintendent shall make a report to the court setting forth (a) the reasonable value of the assets of such insurer; (b) its probable liabilities; and (c) the probable necessary assessment, if any, to pay all allowed claims in full.

2. Upon the basis of such report, including any amendments thereof, the court may levy one or more assessments against all members of such insurer against whom the board of directors of such insurer might have levied an assessment upon the date of the issuance of the order to show

cause under section four hundred and eight of this chapter in the special proceeding pending against such insurer. Such assessment or assessments shall cover the excess of the probable liabilities over the reasonable value of the assets, together with the cost of collection and the probable percentage of uncollectibility thereof, but, the total of all such assessments against any member shall not exceed the maximum amount fixed in the contract of that member, provided such contract has been made in conformance to the statute applicable thereto.

3. The court may thereupon issue an order directing each member of such insurer, if he shall not pay the amount assessed against him to the superintendent, on or before a day to be specified in said order, to show cause in the special proceeding pending against such insurer under this article why he should not be held liable to pay such assessment together with costs as set forth in subsection five of this section and why the superintendent should not have judgment therefor.

4. The superintendent shall cause a notice of such order setting forth a brief summary of the contents of such order (a) to be published in such manner as shall be directed by the court; and (b) to be enclosed in a sealed envelope, addressed and mailed, postage prepaid, to each of said members at his last known address as the same appears on the books of the insurer, or at his last known address, if no address appears upon such books, at least twenty days before the return day of such order to show cause.

5. On the return day of such order to show cause, (a) if such member shall not appear and serve verified objections upon the superintendent, the court shall make an order adjudging that such member is liable for the amount of such assessment together with ten dollars costs and that the superintendent may have judgment against such member therefor; (b) if such member shall appear and serve verified objections upon the superintendent there shall be a full hearing before the court or a referee to hear and determine, who, after such hearing, shall make an order either negativing the liability of such member to pay the assessment or affirming his liability to pay the whole or some part thereof together with twenty-five dollars costs and the necessary disbursements incurred at said hearing, and directing that

the superintendent in the latter case may have judgment therefor.

6. A judgment upon any such order, whether granted by a court or by a referee, shall have the same force and effect, and may be entered and docketed and may be appealed from as if it were a judgment in an original action brought in the [fol. 42] court in which the special proceeding is pending.

§ 423. Determination of Liability of Members for Other Indebtedness. If it shall appear that a member of a domestic mutual insurer is indebted to such insurer apart from his liability to assessment, the court may, upon the application of the superintendent, in any order under section four hundred and twenty-two of this chapter directing such member to show cause why he should not be held liable to pay an assessment, likewise direct him to show cause why he should not be held liable to pay such indebtedness. And the liability of such member for such other indebtedness shall be determined in the same manner, and at the same time, that his liability for such assessment is determined, and the superintendent may likewise have judgment therefor, but without any additional costs.

[fol. 43] EXHIBIT "C"

At a Special Term of the Supreme Court of the State of New York, Part I thereof, held in and for the County of New York, in the Borough of Manhattan, City, County and State of New York, on the 12th day of ~~September~~ November, 1937.

Present: Hon. Aron Steuer, Justice.

In the Matter of the Application of the PEOPLE OF THE STATE OF NEW YORK, by Louis H. Pink, as Superintendent of Insurance of the State of New York, for an Order to Take Possession of the Property and Rehabilita~~tia~~te the Business and Affairs of the Auto Mutual Indemnity Company

Upon reading and filing the order to show cause made on the 10th day of November 1937, by Hon. Isidore Wasservogel, one of the Justices of the Supreme Court of the State

of New York, and the petition of Louis H. Pink, Superintendent of Insurance of the State of New York, duly verified the 10th day of November 1937, together with the duly acknowledged consent of a majority of the Board of Directors of the Auto Mutual Indemnity Company dated the 10th day of November 1937, attached thereto, with due proof of service thereof on the 10th day of November 1937, by James R. Kelly, and it appearing therefrom that the Auto Mutual Indemnity Company is an insurance corporation organized under Article X-b of the Insurance Law of the State of New York; and that its principal office is located in the Borough of Manhattan, City, County and State of New York, and is amenable to the Insurance Law of the State of New York; and that a majority of the directors of the said company have consented to the making and entry of an order of this Court directing the Superintendent of Insurance of the State of New York, to take possession of the property and business of and rehabilitate the said Auto Mutual Indemnity [fol. 44] Company pursuant to and in accordance with Section 401 of the Insurance Law; and the motion made upon such order to show cause having regularly come on to be heard before this Court on the 12th day of November 1937, and the Court having heard Hon. John J. Bennett, Jr., Attorney General of the State of New York, representing the Superintendent of Insurance of the State of New York, in support of said motion, and no one appearing in opposition thereto, and due deliberation having been had thereon, and upon filing the opinion of the Court,

Now, on motion of John J. Bennett, Jr., Attorney General of the State of New York, it is

Ordered that the petition of Louis H. Pink, Superintendent of Insurance of the State of New York, be and the same hereby is in all respects granted,——

Ordered that the Superintendent of Insurance of the State of New York, and/or his successors in office, be and he is and they hereby are authorized, empowered and directed to conduct the business and affairs of the said Auto Mutual Indemnity Company as he or they shall deem wise and expedient under and pursuant to the direction of said Court and until further order of this Court, and that application may be made at the foot hereof for such other and further relief and instructions of the Court, as may, from time to time, be necessary, and it is further

Ordered, that this proceeding shall in the future bear the caption "In the matter of the Rehabilitation of the Auto Mutual Indemnity Company" in place and stead of the caption appearing hereon.

Enter.

A. S., J. S. C.

[fol. 45] EXHIBIT "D"

At a Special Term of the Supreme Court of the State of New York, Part I Thereof, Held in and for the County of New York, in the Borough of Manhattan, City, County and State of New York, on the 24th Day of November, 1937.

Present: Hon. Aron Steuer, Justice.

In the Matter of The Application of the People of the State of New York, by Louis H. Pink, as Superintendent of Insurance of the State of New York, for an Order to Take Possession of the Property and Liquidate the Business and Affairs of the AUTO MUTUAL INDEMNITY COMPANY

ORDER OF LIQUIDATION

Upon reading and filing the order to show cause made on the 23rd day of November, 1937, by Hon. Isidor Wasservogel, one of the Justices of the Supreme Court of the State of New York, and the petition of Louis H. Pink, Superintendent of Insurance of the State of New York, duly verified the 23rd day of November, 1937, together with the copy of the order of rehabilitation duly made, entered and filed in the office of the County Clerk of New York County on the 12th day of November, 1937, attached thereto, all with due proof of service thereof on the 23rd day of November, 1937, by James R. Kelly, and it appearing therefrom that the Auto Mutual Indemnity Company is an insurance corporation organized under Article X-b of the Insurance Law of the State of New York, that its principal office is located in the Borough of Manhattan, City, County and State of New York, and that it is amenable to the Insurance Law of the State of New York; and the motion upon such order to show cause having regularly come on to be heard before this Court on the 24th day of November, 1937, and the Court having heard Irvin Waldman, attorney for the Superintendent of Insurance of the State of New York, as Rehabilitator

of the Auto Mutual Indemnity Company, in support of said motion, and no one appearing in opposition thereto, and due [fol. 46] deliberation and it having been had thereon, having been had thereon, and it appearing to my satisfaction that further efforts to rehabilitate the business and affairs of the Auto Mutual Indemnity Company would be futile and that the said company is insolvent and has been found after examination to be in such condition that the further transaction of business would be hazardous to its policyholders, creditors and to the public, and that its continuance in business of insurance is contrary to public policy; and upon filing the opinion of the Court,

Now, on motion of Irvin Waldman, attorney for the Superintendent of Insurance of the State of New York, as Rehabilitator of the Auto Mutual Indemnity Company, it is

Ordered, that the petition of Louis H. Pink, Superintendent of Insurance of the State of New York, be and the same hereby is in all respects granted, and it is further

Ordered, that the said Louis H. Pink, Superintendent of Insurance of the State of New York and/or his successors in office be and they hereby are authorized and directed forthwith to take possession of the property and liquidate the business and affairs of the said Auto Mutual Indemnity Company under and pursuant to the provisions of Article XI of the Insurance Law of the State of New York; and that said Superintendent of Insurance of the State of New York and his successors in office, be and they hereby are vested with title to all of the property, contracts and rights of action of the said company; and they hereby are directed to deal with the property and business of said company in his or their own names as Superintendents of Insurance of the State of New York, and it is further

* * * * * * *

Ordered, Adjudged and Decreed That the Said Auto Mutual Indemnity Company is insolvent, and it is further

* * * * * * *

Ordered, that the corporate charter of the Auto Mutual Indemnity Company be and the same hereby is forfeited and annulled and the corporation is hereby dissolved, and it is further

Ordered that the said Superintendent of Insurance and/or his successors in office, may, if they see fit, levy an assessment against policyholders in accordance with and pursuant to the Insurance Law of the State of New York and/or the by-laws of the said Auto Mutual Indemnity Company, and take such steps as he or they may deem necessary to enforce the collection of the same, and it is further

Ordered that all further papers in this proceeding shall bear the caption and be entitled

---

[fol. 47] SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK

In the Matter of the Liquidation of the AUTO MUTUAL INDEMNITY COMPANY" in Place and Stead of the Caption Heretofore Used

Enter.

A. S., J. S. C.

[fol. 48] EXHIBIT "E"

At a Special Term, Part II of the Supreme Court of the State of New York, Held in and for the County of New York, at the County Courthouse in the Borough of Manhattan, City, County and State of New York, on the 7th Day of February 1938.

Present: Hon. Bernard L. Shientag, Justice.

Index No. 28894-37

In the Matter of the Liquidation of the AUTO MUTUAL INDEMNITY COMPANY

ORDER

Upon reading and filing the petition and report on assessment of Louis H. Pink, Superintendent of Insurance of the State of New York, as Liquidator of the Auto Mutual Indemnity Company, duly verified the 4th day of February 1938, together with the Exhibits thereto annexed, and it appearing therefrom that it is necessary that an assessment be levied and the liability of the members of the Auto Mutual Indemnity Company for such assessment be determined pursuant to Section 422 of the Insurance Law,

Now, upon motion of Irvin Waldman, Attorney for Louis H. Pink, Superintendent of Insurance of the State of New York, as Liquidator of the Auto Mutual Indemnity Company, it is

Ordered that an assessment of forty (40%) per centum be levied against all members of the said Auto Mutual Indemnity Company against whom an assessment might have been levied on November 10th, 1937, the date of the issuance of the order to show cause under Section 408 of the Insurance Law of the State of New York, initiating the rehabilitation proceeding against the said Auto Mutual Indemnity Company.

Enter.

B. L. S., J. S. C.

Filed Feb. 8, 1938. N. Y. Co. Clk's. Office. A Copy Archibald R. Watson, Clerk. No Fee.

[fol. 49] EXHIBIT "F"

At a Special Term, Part II of the Supreme Court of the State of New York, held in and for the County of New York, at the County Courthouse, in the Borough of Manhattan, City, County and State of New York, on the 12th day of August, 1938.

Present: Hon. Ferdinand Pecora, Justice.

Index No. 28894-1937

In the Matter of the Liquidation of the AUTO MUTUAL INDEMNITY COMPANY

ORDER TO SHOW CAUSE

Upon reading and filing the petition of Louis H. Pink, Superintendent of Insurance of the State of New York, as Liquidator of the Auto Mutual Indemnity Company, duly verified the 9th day of August, 1938, the report of Milton O. Loysen, Special Deputy Superintendent of Insurance in charge of the liquidation of said company, duly verified the 8th day of August, 1938, together with the exhibits thereto annexed; and it appearing therefrom that it is necessary that an assessment be levied and the liability of members of the Auto Mutual Indemnity Company for such assess-

ment and any further indebtedness be determined pursuant to Sections 422 and 423 of the Insurance Law; and it further appearing that this Court by an order heretofore made February 7, 1938, and entered in the office of the Clerk of the County of New York on February 8, 1938, directed that an assessment of forty (40%) per centum be levied against all members of the Auto Mutual Indemnity Company against whom an assessment might have been levied by the Board of Directors of the Auto Mutual Indemnity Company on November 10, 1937, now,

Upon motion of Irvin Waldman, attorney for Louis H. Pink, Superintendent of Insurance of the State of New York, as Liquidator of the Auto Mutaal Indemnity Company, it is

[fol. 50] Ordered, that the persons, firms, associations, corporations and all others whose names appear in Exhibit E, annexed to the report and petition of Louis H. Pink, Superintendent of Insurance, as Liquidator herein, herewith filed, pay the amount assessed as shown in such Exhibit E, to the Superintendent on or before the 19th day of September, 1938, and in the event of the failure, neglect or refusal of such members to pay such assessment, they and each of them are hereby

Ordered to show cause at a Special Term, Part I, of this Court to be held in and for the County of New York at the County Courthouse, Pearl and Centre Streets, Borough of Manhattan, City, County and State of New York, on the 29th day of September, 1938, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, why such members should not be held liable to pay such assessment and the Superintendent have judgment therefor, together with costs as provided by law, viz, (a) the sum of $10.00 if on the return day of this order to show cause such members shall not appear and serve verified objections upon the Superintendent as herein provided, and (b) the sum of $25.00 and the necessary disbursements incurred at a hearing in the event that such members shall appear and serve verified objections upon the Superintendent and after a hearing before the Court or Referee, an order shall be made affirming the liability of the member to pay the whole or some part thereof, and it is further

Ordered, that at the same place and time, viz, the 29th day of September, 1938, unless payment thereof be made prior thereto, the members of the Auto Mutual Indemnity

Company, whose names appear in Exhibit E annexed to the report of the Superintendent and who appear therein to be indebted to the Auto Mutual Indemnity Company, show cause why they should not be held liable to pay such indebtedness and why their respective liabilities should not be determined, and the Superintendent of Insurance, as Liquidator, have judgments therefor and it is further

Ordered that objections to the assessment and such other indebtedness as is set forth in Exhibit E annexed to the [fol. 51] said report of the Superintendent and made a part thereof, shall be in writing, verified under oath, containing the grounds on which the objections are made and the facts relied upon by the objector, and shall be filed with the Clerk of New York County and a copy thereof served upon Irvin Waldman, attorney for the Superintendent of Insurance of the State of New York, at 111 John Street, New York, New York, on or before 12:00 o'clock noon the 27th day of September, 1938, and it is further

Ordered, that Louis H. Pink, Superintendent of Insurance of the State of New York, as Liquidator of the Auto Mutual Indemnity Company shall cause a notice of this order setting forth a brief summary of the contents thereof to be published in the Journal of Commerce and Commercial and New York Law Journal, twice a week for two successive weeks commencing the week of August 15, 1938, and it is further

Ordered, that he shall further cause the same or a similar notice of this order, setting forth a brief summary of the contents thereof, to be enclosed in a sealed envelope, addressed and stamped, postage prepaid, to each of said members at his last known address as the same appears on the books of the insurer, or at his last known address if no address appears upon such books, on or before the 9th day of September, 1938.

Enter.

F. P., J. S. C.

A Copy. Archibald R. Watson, Clerk. No Fee.

[fol. 52] EXHIBIT "G"

At a Special Term, Part I of the Supreme Court of the State of New York, held in and for the County of New York, at the County Courthouse, Centre and Pearl Streets, in the

Borough of Manhattan, City, County and State of New York, on the 17th day of November, 1938.

Present: Honorable Louis A. Valente, Justice.

In the Matter of the Liquidation of the AUTO MUTUAL INDEMNITY COMPANY

ORDER

The Superintendent of Insurance of the State of New York, as Liquidator of Auto Mutual Indemnity Company, having duly made a report of this court pursuant to Section 422 of the Insurance Law of the State of New York, and upon the basis of such report the Court having levied an assessment against the members of the Auto Mutual Indemnity Company against whom the Board of Directors thereof might have levied as assessment on November 10, 1937; and the said Superintendent of Insurance having duly moved this Court for an order confirming the liability of the members to pay such assessment, and in addition thereto any other indebtedness pursuant to Section 423 of the Insurance Law of the State of New York, and for judgment in accordance with Sections 422 and 423 of the Insurance Law of the State of New York,

[fol. 53] And a cross motion having been made by one George E. Truyz for an order vacating and setting aside a certain order made on February 7th, 1938, and entered in the office of the County Clerk of New York County on the 8th day of February, 1938, more particularly hereinafter described,

And a cross motion having been duly made by Dixie Coaches, Inc. for an order vacating and setting aside the order to show cause made herein on the 12th day of August, 1938, and any and all other proceedings had herein insofar as the same relate to and affect Dixie Coaches, Inc. and in the event of a denial of the motion for an order extending the time for the said Dixie Coaches, Inc. to file its objection to any assessment against it herein,

And the said motion of the Superintendent of Insurance as Liquidator and the cross motions hereinbefore described having duly come on to be heard before this Court on the 29th day of September, 1938,

Now, upon reading the petition of Louis H. Pink, Superintendent of Insurance of the State of New York, as Liqui-

dator of the Auto Mutual Indemnity Company, duly verified the 9th day of August, 1938, the report of Milton O. Loysen, Special Deputy Superintendent of Insurance, duly verified the 8th day of August, 1938, together with the exhibits thereto annexed, setting forth the financial statement prepared by the Liquidator as of December 10th, 1937, the list of the members as set forth in Exhibit "E" against whom an assessment was levied, contained in and made a part of said report and designated as the Second and Supplemental Report and petition on Assessment of Policyholders, all filed herein in the office of the County Clerk of New York County on the 12th day of August, 1938, the order herein made on the 7th day of February, 1938 and duly filed in the office of the Clerk of the County of New York on Feb-
[fol. 54] ruary 8, 1938, directing the levy of an assessment of Forty (40%) per cent against all members of the Auto Mutual Indemnity Company against whom an assessment might have been levied by the Board of Directors of the Auto Mutual Indemnity Company on November 10, 1937, the report herein filed in the office of the County Clerk of New York County upon which the said order of February 7, 1938 was based, the order of liquidation herein duly made, filed and entered in the office of the Clerk of the County of New York on the 24th day of November, 1937, and the Order to Show Cause duly made at Special Term, Part II of this Court, held in and for the County of New York, at the County Courthouse thereof, on the 12th day of August, 1938, herein duly filed in the office of the Clerk of the County of New York, with due proof of the publication of a notice of such order setting forth a brief summary of the contents thereof in the Journal of Commerce and Commercial and the New York Law Journal, twice a week for two successive weeks commencing August 15, 1938, and due proof of the mailing of a similar notice of such order enclosed in a sealed envelope addressed and stamped, postage prepaid, to each of the said members at his last known address as the same appears on the books of the insurer or at his last known address if no address appears on such books, all as required by such order, in support of the motion of the Superintendent of Insurance as Liquidator of the Auto Mutual Indemnity Company for an order confirming the liability of the members of the said company to pay such assessment and for judgment in accordance with Sections 422 and 423 of the Insurance Law of the State of New York,

and the other relief as prayed for, all more particularly hereinbefore set forth,

[fol. 55] And after hearing Irvin Waldman, Esq., attorney for the Superintendent of Insurance of the State of New York, as Liquidator of the Auto Mutual Indemnity Company, in support of such motion, and the following persons having appeared and having served and filed verified objections

* * * * * * *

And due deliberation having been had on all of the said motions, and upon filing the opinion of the Court,

Now, on motion of Irvin Waldman, attorney for the Superintendent of Insurance of the State of New York, as Liquidator of the Auto Mutual Indemnity Company, it is

Ordered that the said motion to approve and confirm the Second and Supplemental Report and Petition of The Superintendent of Insurance as Liquidator, as hereinafter amended, be and the same hereby is in all respects granted, except as hereinafter otherwise provided, and it is further

Ordered that the said Second and Supplemental Report and Petition of the Superintendent of Insurance, as Liquidator, as hereinafter amended, be and the same hereby is in all respects ratified, approved and confirmed, except as hereinafter otherwise provided, and it is further

Ordered that the persons, firms, associations and corporations as set forth in Exhibit "E" of the Liquidator's Second and Supplemental Report, except as hereinafter otherwise provided, are liable for the assessment levied upon them as set forth in the said Second and Supplemental Report of the Superintendent of Insurance as Liquidator, and that the Superintendent of Insurance as Liquidator may have [fol. 56] judgment against each of them, together with $10.00 costs and disbursements, together with any other indebtedness due from such persons, firms, associations or corporations as set forth in such Exhibit in accordance with Section 423 of the Insurance Law, and it is further

Ordered that the Clerk of the County of New York shall enter judgment in conformity and in accordance with the foregoing direction against all or any of those against whom the Superintendent of Insurance as Liquidator may have judgment as hereinbefore set forth, and that execution shall issue therefor, and it is further

* * * * * * *

Ordered that application may be made at the foot hereof for such other and further relief and instructions of the Court as may, from time to time, be necessary.

Enter,

L. A. V., J. S. C.

Filed Nov. 18, 1938. N. Y. Co. Clk's Office. Archibald R. Watson, Clerk.

No fee. A copy. Archibald R. Watson, Clerk.

[fol. 57] EXHIBIT "H"

Established 1922

Auto Mutual Indemnity Company

New York, N. Y.

This Policy is issued in consideration of the payment of a premium and of the Declarations endorsed hereon or attached hereto in the form of endorsements, which are hereby made a part hereof, which Declarations the Insured, by acceptance of this Policy, warrants to be true, and in further consideration of the promise by the Insured to perform each term of this Policy on the Insured's part to be performed both before and after loss or damage.

Declarations

Item 1. Name of Insured ——.
Address Etc. ——.

* * * * * * *

Date and place of Issue ——.
Name of Agency ——. Countersigned by ——, Authorized Agent.

Auto Mutual Indemnity Company

(A Mutual Insurance Company, Herein Called the Company)

Does Hereby Agree with the insured named in the declarations made a part hereof, in consideration of the payment of the premium and of the statements contained in the

declarations and subject to the limits of liability, exclusions, conditions and other terms of this policy:

1. Coverages

A. Bodily Injury Liability. To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law for damages, • • • Etc.

• • • • • • •

Conditions

1. • • • Etc.

[fol. 58] 14. Dividends

The insured shall be entitled to an equitable participation in the funds of the company in excess of the amounts required to pay all policy and other obligations together with the reserve funds required or permitted by law; such distribution shall be made by the company in accordance with the Insurance Law and the charter and by-laws of the Company, based upon the claim experience which shall be computed separately by classes of risks and/or States and territories.

15. • • •

In Witness Whereof, the Auto Mutual Indemnity Company has caused this policy to be signed by its President and Secretary, but the policy shall not be binding upon the Company, until countersigned by a duly authorized agent of the Company.

Vincent Scully, Secretary; Frank Bailey, President.
(Seal.)

(Auto Mutual Indemnity Company of New York— Established 1922.)

On Back of Policy:

No. —

National Standard Automobile Policy

Expires —— 19—

Issued to

_____

Auto Mutual Indemnity Company

Established 1922

Home Office, New York, N. Y.

Issued by

——Branch Office

Auto Mutual Indemnity Co.

[fol. 59] The Old Reliable Mutual

(The Safeguard Against Accidents—Auto Mutual Indemnity Company.)

Notice to Policyholders

1. The Insured is hereby notified that by virtue of this Policy he is a member of the Auto Mutual Indemnity Company and is entitled to vote either in person or by proxy at any and all meetings of said company.

2. The annual meetings are held at the Home Office of the Company in New York City on the second Tuesday of January in each year, at twelve o'clock noon.

3. The contingent liability of the named Insured under this Policy shall be limited to one year from the expiration or cancellation hereof and shall not exceed the limit provided by the Insurance Law of the State of New York.

[fol. 60] ORDER

The foregoing amendment being read and considered, the same is hereby allowed and ordered filed subject to demurrers of the defendants.

This 25th day of July, 1940.

Edgar E. Pomeroy, Judge S. C. A. C.

[File endorsement omitted.]

[fol. 61] IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

AMENDMENT TO PLAINTIFF'S PETITION—Filed August 19, 1940

Now comes the plaintiff and by leave of the court first had, amends the petition heretofore filed by him by adding to the amendment filed July 25, 1940, the following additional allegations:

1

By adding to paragraph 13 of the original petition immediately following the words "provided for in the policy" quoted in said paragraph, an additional quotation from said section 346, to wit:

"Every member shall be liable to pay, and shall pay his proportionate part of any assessment which may be laid by the corporation in accordance with law and his contract on account of losses and expenses incurred while he was a member, if he is notified of such assessment within one year after the expiration of his policy * * *."

2

By adding a new paragraph immediately following paragraph 10 of the amendment of July 25, 1940, which paragraph is to be known as paragraph 10 (a) of the petition as amended, as follows:

"10 (a). I

Petitioner will present to the court on the trial of this case the acts of the legislature of the State of New York

referred to in the preceding paragraph, duly authenticated by the great seal of the State of New York, and will present [fol. 62] the records and judicial proceedings above referred to, duly attested under the seal of the court, all as is provided by section 38-627 of the Code of Georgia, and by the United States Revised Statutes, section 905, title 28, section 687.

Petitioner contends that the said public acts, judicial proceedings and records of the State of New York aforesaid, are entitled and should receive full faith and credit in the courts of this State and in this proceeding, as is specifically provided in section 38-627 of the Code of Georgia of 1933 and by article 4, section 1 of the constitution of the United States (Code section 1-401) which provides:

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may by general laws prescribed the manner in which such acts, records and proceedings shall be proved, and the effects thereof."

Any judgment or ruling which fails to give said acts and proceedings the full force and credit that they have by law and usage in the courts of New York has the effect of denying to the said acts and proceedings the constitutional protection aforesaid.

10 (A) II

Petitioner further alleges that any judgment which denies or has the effect of denying to the judgments and statutes aforesaid the full force and effect to which they are entitled under the constitution and laws aforesaid, abridges the privileges and immunities of this petitioner as a citizen of the United States, confrary to the fourteenth amendment of the United States, Code of Georgia, sec. 1-815, which provides:

"Citizenship. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge [fol. 63] the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws."

Wherefore, petitioner prays that these his amendments be allowed and ordered filed as part of the original cause of action.

Elliott Goldstein, Powell, Goldstein, Frazer & Murphy, Attorneys for Petitioner.

ORDER

The foregoing amendment is hereby allowed and ordered filed, subject to defendants' demurrers.

This 14th day of August, 1940.

Paul S. Etheridge, Judge S. C. A. C.

[File endorsement omitted.]

[fol. 64] IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

AMENDMENT TO PLAINTIFF'S PETITION—Filed August 26, 1940

With leave of the Court comes the plaintiff, and in order to properly identify the copy of the insurance contract with the defendants and make same part of the record in lieu of the excerpts therefrom, files the following amendment:

1

Plaintiff strikes paragraph 9 from the amendment filed and allowed on the 25th day of July, 1940, and substitutes therefor the following paragraph, designating the same as 9(2) for clarity:

9 (a)

By striking paragraph 12 of said petition and inserting in lieu thereof the following:

All of the defendants were policyholders of the company during some portion of the year prior to November 10, 1937, as shown by paragraph 14. A copy of the policy issued to each of the defendants is attached hereto as exhibit "H"

and made a part hereof by reference. Said policy, as exhibited, is a form only. The policy actually held by the defendants is filled out with the name, coverage and date of issuance, but each of said defendants have a policy similar to said exhibit H and the same is the type of policy used generally by the company during the time above referred to, and is the type of policy that was considered by the court in this case, when it entered its order of confirmation referred to in paragraph 8 of said amendment of July 25, 1940.

(Here follow 3 photolithographs, side folios 65, 66, 66½)

AUTO MUTUAL

INDEMNITY COMPANY

(A MUTUAL INSURANCE COMPANY, HEREIN CALLED THE COMPANY)

DOES HEREBY AGREE with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and of the statements contained in the declarations and subject to the limits of liability, exclusions, conditions and other terms of this policy:

I. COVERAGES

A. **Bodily Injury Liability.** To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law for damages, including damages for care and loss of services, because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons, caused by accident and arising out of the ownership, maintenance or use of the automobile.

B. **Property Damage Liability.** To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law for damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of the automobile.

II. DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS

It is further agreed that as respects insurance afforded by this policy the company shall:

(a) defend in his name and behalf any suit against the insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; but the company shall have the right to make such investigation, negotiation and settlement of any claim or suit as may be deemed expedient by the company;

(b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish such bonds, all costs taxed against the insured in any such suit, all expenses incurred by the company, all interests accruing after entry of judgment until the company has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the company's liability thereon, and any expense incurred by the insured, in the event of bodily injury, for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

The company agrees to pay the expenses incurred under divisions (a) and (b) of this section in addition to the applicable limit of liability of this policy.

III. DEFINITION OF "INSURED"

The unqualified word "insured" wherever used includes not only the named insured but also any person while using the automobile and any person or organization legally responsible for the use thereof, provided that the declared and actual use of the automobile is "pleasure and business", or "commercial", each as defined herein, and provided further that the actual use is with the permission of the named insured. The provisions of this paragraph do not apply:

(a) to any person or organization with respect to any loss against which he has other valid and collectible insurance;

(b) to any person or organization with respect to bodily injury to or death of any person who is a named insured;

(c) to any person or organization, or to any agent or employee thereof, operating an automobile repair shop, public garage, sales agency, service station, or public parking place, with respect to any accident arising out of the operation thereof;

(d) to any employee of an insured with respect to any action brought against said employee because of bodily injury to or death of another employee of the same insured injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such insured.

IV. AUTOMATIC INSURANCE FOR NEWLY ACQUIRED AUTOMOBILES

If the named insured who is the owner of the automobile acquires ownership of another automobile, such insurance as is afforded by this policy applies also to such other automobile as of the date of its delivery to him, subject to the following additional conditions: (1) if the company insures all automobiles owned by the named insured at the date of such delivery, insurance applies to such other automobile, if it is used for pleasure purposes or in the business of the named insured as expressed in the declarations, but only to the extent applicable to all such previously owned automobiles; (2) if the company does not insure all automobiles owned by the named insured at the date of such delivery, insurance applies to such other automobile, if it replaces an automobile described in this policy and may be classified for the purpose of use stated in this policy, but only to the extent applicable to the replaced automobile; (3) the insurance afforded by this policy automatically terminates upon the replaced automobile at the date of such delivery; and (4) this agreement does not apply

(a) to any loss against which the named insured has other valid and collectible insurance, nor

(b) unless the named insured notifies the company within ten days following the date of delivery of such other automobile, nor

(c) except during the policy period, but if the date of delivery of such other automobile is prior to the effective date of this policy the insurance applies as of the effective date of this policy, nor

(d) unless the named insured pays any additional premium required because of the application of this insurance to such other automobile.

V. POLICY PERIOD, TERRITORY, PURPOSES OF USE

This policy applies only to accidents which occur during the policy period, while the automobile is within the United States in North America (exclusive of Alaska) or the Dominion of Canada, or while on a coastwise vessel between ports within said territory, and is owned, maintained and used for the purposes stated as applicable thereto in the declarations.

such other automobile.

V. POLICY PERIOD, TERRITORY, PURPOSES OF USE

This policy applies only to accidents which occur during the policy period, while the automobile is within the United States in North America (exclusive of Alaska) or the Dominion of Canada, or while on a coastwise vessel between ports within said territory, and is owned, maintained and used for the purposes stated as applicable thereto in the declarations.

EXCLUSIONS

This policy does not apply:

(a) While the automobile is used in the business of demonstrating or testing, or as a public or livery conveyance, or for carrying persons for a consideration, or while rented under contract or leased, unless such use is specifically declared and described in this policy and premium charged therefor;

(b) While the automobile is used for the towing of any trailer not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile not covered by like insurance in the company;

(c) While the automobile is operated by any person under the age of fourteen years, or by any person in violation of any state, federal or provincial law as to age applicable to such person or to his occupation, or by any person in any prearranged race or competitive speed test;

(d) To any liability assumed by the insured under any contract or agreement; or to any accident which occurs after the transfer during the policy period of the interest of the named insured in the automobile, without the written consent of the company;

(e) To bodily injury to or death of any employee of the insured while engaged in the business of the insured, other than domestic employment, or in the operation, maintenance or repair of the automobile; or to any obligation for which the insured may be held liable under any workmen's compensation law;

(f) To property owned by, rented to, leased to, in charge of, or transported by the insured.

CONDITIONS

1. Automobile Defined—Two or More Automobiles

Except where specifically stated to the contrary, the word "automobile" wherever used in this policy shall mean the motor vehicle, trailer or semi-trailer described herein; and the word "trailer" shall include semi-trailer. When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each but as respects limits of bodily injury liability and property damage liability a motor vehicle and a trailer or trailers attached thereto shall be held to be one automobile.

2. Limits of Liability

The limit of bodily injury liability expressed in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury to or death of one person in any one accident; the limit of such liability expressed in the declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury to or death of two or more persons in any one accident. The inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

3. Financial Responsibility Laws

Any insurance provided by this policy for bodily injury liability or property damage liability shall conform to the provisions of the Motor Vehicle Financial Responsibility Law of any state or province which shall be applicable with respect to any such liability arising from the use of the automobile during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim or suit, involving a breach of the terms of this policy and for any payment the company would not have been obligated to make under the provisions of this policy except for the agreement contained in this paragraph.

4. Notice of Accident—Claim or Suit

Upon the occurrence of an accident written notice shall be given by or on behalf of the insured to the company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the name and address of the injured and of any available witnesses. If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

5. Assistance and cooperation of the Insured

The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits and the company shall reimburse the insured for any expense, other than loss of earnings, incurred at the company's request. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of the accident.

6. Action Against Company

No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the conditions hereof, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant, and the company, nor in either event unless suit is instituted within two years and one day after the date of such judgment or written agreement.

Any person or his legal representative who has secured such judgment or written agreement shall thereafter be entitled to recover under the terms of this policy in the same manner and to the same extent as the insured. Nothing contained in this policy shall give any person or organization any right to join the company as a co-defendant in any action against the insured to determine the insured's liability.

Bankruptcy or insolvency of the insured shall not relieve the company of any of its obligations hereunder.

7. Other Insurance

If the named insured has other insurance against a loss covered by this policy, the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability expressed in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

8. Subrogation

In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor and the insured shall execute all papers required and shall do everything that may be necessary to secure such rights.

9. Changes

No notice to any agent, or knowledge possessed by any agent or by any other person shall be held to effect a waiver or change in any part of this policy nor estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part hereof, signed by an executive officer of the company.

10. Assignment

No assignment of interest under this policy shall bind the company until its consent is endorsed hereon; if, however, the named insured shall die or be adjudged bankrupt or insolvent within the policy period, this policy, unless canceled, shall, if written notice be given to the company within thirty days after the date of such death or adjudication, cover (1) the named insured's legal representative as the named insured, and (2) subject otherwise to the provisions of paragraph III, any person having proper temporary custody of the automobile, as an insured, until the appointment and qualification of such legal representative, but in no event for a period of more than thirty days after the date of such death or adjudication.

11. Premium

The premium is always considered as paid annually in advance, but, by agreement in Item 4, may be paid in installments. If any premium or installment of premium on this policy be not paid on or before the due or renewal date set forth in Item 4 to the company or its authorized agent, then liability on account of this policy shall wholly cease and terminate as of 12:00 midnight on the date such payment is due.

12. Cancellation

This policy may be cancelled by the named insured by mailing written notice to the company stating when thereafter such cancellation shall be effective, in which case the company shall, upon demand, refund the excess of premium paid by such insured above the customary short rate premium for the expired term. This policy may be cancelled by the company by mailing written notice to the named insured at the address shown in this policy stating when not less than five days thereafter such cancellation shall be effective, and upon demand the company shall refund the excess of premiums paid by such insured above the pro rata premium for the expired term. The mailing of notice as aforesaid shall be sufficient proof of notice and the insurance under this policy as aforesaid shall end on the effective date and hour of cancellation stated in the notice. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing. The company's check or the check of its representative similarly mailed or delivered shall be a sufficient tender of any refund of premium due to the named insured. If required by statute in the state where this policy is issued, refund of premium due to the named insured shall be tendered with notice of cancellation when the policy is cancelled by the company and refund of premium due to the named insured shall be made upon computation thereof when the policy is cancelled by the named insured.

No notice of cancellation shall be necessary to any person other than the Insured named in Item 1 of the Declarations to terminate the Policy unless specifically provided for by endorsement hereto.

If this Policy be cancelled for any cause whatsoever (regardless whether an agent of the Company and/or the broker through whom this Policy might be written or placed has or has not paid the Company the premium on this policy), it is understood and agreed; that, any claim for return (unearned) premium under this Policy shall be invalid unless or until the premium on this Policy actually shall have been paid either to the Company itself or to its authorized and duly appointed agent.

13. Endorsements

(As attached hereto are made part of this policy.)

14. Dividends

The insured shall be entitled to an equitable participation in the funds of the company in excess of the amounts required to pay all policy and other obligations together with the reserve funds required or permitted by law; such distribution shall be made by the company in accordance with the Insurance Law and the charter and by-laws of the company, based upon the claim experience which shall be computed separately by classes of risks and/or States and territories.

15. Declarations

By acceptance of this policy the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations, and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

IN WITNESS WHEREOF, the AUTO MUTUAL IDEMNITY COMPANY has caused this policy to be signed by its President and Secretary, but the policy shall not be binding upon the Company, until countersigned by a duly authorized agent of the Company.

AN-99

SHORT RATE CANCELLATION TABLE

For Term of One Year

	Per Cent of Annual Premium
1 day	2
2 days	4
3 "	5
4 "	6
5 "	7
6 "	8
7 "	9
8 "	9
9 "	10
10 "	10
11 "	11
12 "	12
13 "	13
14 "	13
15 "	14
16 "	14
17 "	15
18 "	16
19 "	16
20 "	17
25 "	19
30 "	20
35 "	23
40 "	26
45 "	27
50 "	28
55 "	29
60 "	30
65 "	33
70 "	36
75 "	37
80 "	38
85 "	39
90 "	40
105 "	45
120 "	50
135 "	55
150 "	60
165 "	65
180 "	70
195 "	73
210 "	75
225 "	78
240 "	80
255 "	83
270 "	85
285 "	88
300 "	90
315 "	93
330 "	95
360 "	100
or three months	
or four months	
or five months	
or six months	
or seven months	
or eight months	
or nine months	
or ten months	
or eleven months	
or twelve months	

REMARKS:

_____

_____

_____

_____

_____

_____

_____

NOTICE OF CANCELLATION OF POLICY

_____

Date of Notice from Assured

AUTO MUTUAL INDEMNITY COMPANY

This policy is herewith returned for cancellation in accordance with the provisions of Condition 12 thereof—such cancellation to become effective at _____
(Hour)

_____
(Date)

_____

Signature of Assured

WHAT TO DO AND WHAT NOT TO DO IN CASE OF ACCIDENT

1. Render aid when necessary. Take names and addresses of all witnesses, also badge number of policeman present (if any). Independent witnesses are important.
2. If any other vehicle involved, take name and address of owner and driver and registration number of car —also operator's license (if any).
3. If after lighting-up time, note if all lamps are lighted in accordance with regulations.
4. Carefully note exact nature and condition of damage done.
5. Make a rough sketch plan of position of each car involved in accident, and take notes of exact time of accident, the condition of the road (such as wet or dry).
6. Report the accident immediately to the Company's nearest Claim Department. If in trouble, wire the Company's Home Office for instructions. The more promptly and fully we are advised, the more effectively we can deal with the matter.
7. Don't run away from the scene of accident.
8. Don't assume that the accident is of no importance and that nobody can say you are to blame. "Trivial" accidents sometimes result in troublesome claims. Let the Company have the full details and take over the trouble and responsibility.

NOTICE TO POLICYHOLDERS

1. The Insured is hereby notified that by virtue of this Policy he is a member of the AUTO MUTUAL INDEMNITY COMPANY and is entitled to vote either in person or by proxy at any and all meetings of said company.
2. The annual meetings are held at the Home Office of the Company in New York City on the second Tuesday of January in each year, at twelve o'clock noon.
3. The contingent liability of the named Insured under this Policy shall be limited to one year from the expiration or cancellation hereof and shall not exceed the limits provided by the Insurance Law of the State of New York.

SAFETY CODE REMINDERS

1. Be sure your brakes are in good working order—inspect them frequently.
2. Be alert in your driving and anticipate sudden emergencies.
3. Obey all traffic and parking regulations.
4. Keep to the right and comply with road markings and signs.
5. Signal for stops and turns—watch the car ahead.
6. Slow down at crossings, schools and dangerous places.
7. Never pass cars on hills, curves or crossings.
8. Adapt your driving to road conditions, rain, ice, soft spots in roads.

IMPORTANT - READ YOUR POLICY CAREFULLY

No. AC 58210

NATIONAL STANDARD AUTOMOBILE POLICY

EXPIRES_____, 193__

ISSUED TO

_____

_____

AUTO MUTUAL
ESTABLISHED 1922
INDEMNITY COMPANY

"THE OLD RELIABLE MUTUAL"

EXHIBIT "H"

ESTABLISHED 1928

AUTO MUTUAL INDEMNITY COMPANY

NEW YORK, N. Y.

This Policy is issued in consideration of the payment of a premium and of the Declarations endorsed hereon or attached hereto in the form of endorsements, which are hereby made a part hereof, which Declarations the Insured, by acceptance of this Policy, warrants to be true, and in further consideration of the promise by the Insured to perform each term of this Policy on the Insured's part to be performed both before and after loss or damage.

DECLARATIONS

Item 1 Name of Insured _____

Address _____
(Street) (Town) (State)

The automobile will be principally garaged and used in the above town and state, unless otherwise specified herein.

Named Insured is: Individual ☐ Corporation ☐ Partnership ☐

Occupation and Name of Employer _____

Item 2 Policy period shall be from _____ 193__ to _____ 193__, 12:01 A. M. Standard Time, at the address of the named Insured as stated herein.

Item 3 The insurance afforded is only with respect to such and so many of the following coverages as are indicated by special specific premium charge or charges. The limit of the Company's liability against such coverage shall be as stated herein subject to all of the terms of the policy having reference thereto.

Coverages	Limits of Liability
(a) Bodily Injury Liability	$_____ each person and subject to that limit for each person, $_____ each accident
(b) Property Damage Liability	$_____ each accident

Item 4 The full detailed description of each automobile to be covered by this Policy and the premiums for the insurance effective, are as follows:

TRADE NAME	MODEL YEAR	TYPE OF BODY (also load capacity if truck or trailer, seating capacity if bus)	SERIAL NUMBER	ENGINE NUMBER	PREMIUM	
					BODILY INJURY	PROPERTY DAMAGE

Total Premium $ _____ payable as follows:

NAME	YEAR	truck or trailer, seating capacity if bus)	NUMBER	NUMBER	BODILY INJURY	PROPERTY DAMAGE

Total Premium $_____, payable as follows: _____

Where the premium is arranged on an instalment basis it is hereby mutually agreed that if any part premium or instalment of premium provided for in this policy be not paid as hereinabove provided and the policy, therefore, lapses or is cancelled, the Company shall be entitled to an earned premium computed according to the Short Rate Cancellation Table contained in said policy.

Item 5 The purposes for which the automobile is to be used are _____

(a) The term "pleasure and business" is defined as personal, pleasure family and business use.
(b) The term "commercial" is defined as the transportation or delivery of goods, merchandise or other materials, and uses incidental thereto in direct connection with the named Insured's business occupation as expressed in Item 1.
(c) Use of the automobile for the purposes stated includes the loading and unloading thereof.

Item 6 The named Insured is the sole owner of the automobile, except as herein stated _____

The assured does not own or operate any other automobiles than those specifically described herein, except as herein stated _____

Item 7 No insurer has cancelled any automobile insurance issued to the named Insured during the past year, except as herein stated _____

Item 8 The following endorsements are hereby made part of this Policy, AUTO MUTUAL Form Nos.: _____

Date and place of issue _____

Name of Agency _____ Countersigned by _____
Authorized Agent.

[fol. 67] Wherefore, plaintiff prays that this his amendment be allowed and ordered filed.

Elliott Goldstein, Powell, Goldstein, Frazer & Murphy, Attorneys for Plaintiff.

ORDER

The foregoing amendment allowed and ordered filed. This 17 day of August, 1940.

Paul S. Etheridge, Judge S. C. A. C.

[File endorsement omitted.]

[fol. 68] IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

DEMURRER—Filed October 24, 1939

And now comes Service Coach Line, Inc., one of the defendants in the above stated case, and before pleading to the merits of said cause files this its demurrer thereunto, and for grounds of demurrer says:

(1)

Because said petition fails to set out any cause of action under the laws of this State.

(2)

Because the specially pleaded insurance law of the State of New York, as embodied in paragraph thirteen of said petition, is a requirement by law of the State of New York different from that imposed by the laws of this State, and of which this defendant had no notice at the time of the issuance to it of its policies designated as: AC 28544; AC 28549; and AC 4242, either in said policies or the laws of this State.

(3)

Because the insurance contracts designated in plaintiffs' petition were intended to have effect in this State and were executed in Georgia in conformity to the laws of this State

and the statute of the State of New York, specially pleaded has no force and effect in the State of Georgia.

Wherefore, defendant prays that these grounds of its demurrer be inquired into by the court and said petition dismissed.

[fol. 69] R. Earl Camp, P. O. Address, Dublin, Georgia, Attorney for Service Coach Line, Inc.

[File endorsement omitted.]

[fol. 70] In Superior Court of Fulton County

[Title omitted]

Demurrer—Filed October 30, 1939

Now comes H. A. Adams, as individual trading as Adams Transfer Company, the said Adams Transfer Company being one of the defendants named in the above and foregoing case, at the appearance term of said case, and, not waiving his special plea to the jurisdiction heretofore filed, and, before filing his answer therein, files these, his grounds of demurrer thereto, and for cause of demurrer says:

1

Defendant demurs specially to paragraph one (1) of said petition, in that the pleader admits no jurisdiction of this defendant, in that plaintiff alleges that the defendants are residents of other jurisdictions than Fulton, the county in which said suit was filed, and does not allege any matter or thing conferring upon this court jurisdiction over this defendant or the subject matter of said suit, and that said paragraph should be stricken from the petition.

2

Defendant demurs specially to paragraph two (2) of said petition in that all of the things stated therein are conclusions of the pleader; that no copies or certified copies of orders of incorporation or change of name, or change of by-laws, or change of constitution, or of article 10-B of the insurance laws of the State of New York are embodied in or attached to said paragraph and petition, and that this de-

fendant is bound only by the laws of the State of Georgia, in so far as the rights and liabilities of this defendant are concerned, and that this defendant is not bound by any by-laws, constitution, application, or any amendments thereto [fol. 71] not attached to the original policy of insurance, if any, or stated therein, and that said paragraph should be stricken from the petition, in toto.

(3 to 15, both inclusive, omitted.)

16

This defendant also demurs generally to said petition as a whole and for grounds thereof says that said petition fails to set out any cause of action against this defendant and that for said reason said petition should be dismissed.

Joseph E. Webb and P. J. Smith, Attorneys for Defendant, P. O. Address: P. O. Box No. 16, Athens, Georgia.

[File endorsement omitted.]

[fol. 72] In Superior Court of Fulton County

[Title omitted]

Demurrer—Filed November 6, 1939

Now comes A. A. A. Highway Express, Inc., one of the defendants in the above stated cause, and without waiving its right to file a plea and answer herein, but especially insisting upon the same, and files this its demurrer to plaintiff's petition and for grounds of demurrer says:

1

Defendant demurs to plaintiff's petition on the ground that no cause of action is set out therein against this defendant.

2

This defendant demurs to the allegations contained in paragraph five (5) of plaintiff's petition on the grounds that said allegations fail to set forth what the assets and liabilities of Auto Mutual Indemnity Company consisted of

and the amount of the same and for what purposes and means the assessment upon the policy holders were to be devoted, so as to put this defendant on notice. Defendant further demurs to the allegations contained in paragraph five (5) on the ground that plaintiff's petition fails to allege that this defendant had any knowledge or notice of the things therein alleged.

3

This defendant demurs to the allegations contained in paragraphs three (3), six (6), seven (7), and eight (8) of plaintiff's petition on the ground that said paragraphs and said petition fails to allege that this defendant had any notice of the facts alleged in each of said paragraphs, and upon the further ground that the allegations contained in said paragraphs set forth mere conclusions of the pleader [fol. 73] and fail to set forth therein or attach to said petition any copy of the orders and reports referred to in said paragraphs.

4

This defendant demurs to the allegations contained in paragraph thirteen (13) of plaintiff's petition on the grounds that the insurance laws of the State of New York that plaintiff specially pleads in said paragraph is a requirement of law of the State of New York different from that imposed by the laws of this State and of which this defendant had no notice at the time of the issuance to it of its policies designated as Policy No. AC 28543, and AC 42060, either in said policies or the laws of this State.

Defendant further demurs to the aforesaid allegations contained in said paragraph thirteen (13) of plaintiff's petition on the ground that the insurance contracts set forth in plaintiff's petition were intended to have effect in the State of Georgia and were executed in the State of Georgia in conformity to the laws of the State of Georgia and the aforesaid specially pleaded statutes of the State of New York have no force and effect in the State of Georgia.

(5 & 6 omitted.)

7

This defendant further demurs to plaintiff's petition on the ground that said petition sets forth a misjoinder of parties.

Wherefore, this defendant prays that these its several grounds of demurrer be sustained and that plaintiff's petition be dismissed with all costs upon plaintiff.

Reynolds & Brandon, Attorneys for Defendant, A. A. A. Highway Express, Inc.

[File endorsement omitted.]

[fol. 74] In Superior Court of Fulton County

[Title omitted]

Demurrer—Filed November 6, 1939

Now comes East & West Motor Lines, Inc., one of the defendants in the above stated cause, and without waiving its right to file a plea and answer herein, but especially insisting upon the same, and files this its demurrer to plaintiff's petition and for grounds of demurrer says:

1

Defendant demurs to plaintiff's petition on the ground that no cause of action is set out therein against this defendant.

2

This defendant demurs to the allegations contained in paragraph five (5) of plaintiff's petition on the grounds that said allegations fail to set forth what the assets and liabilities of Auto Mutual Indemnity Company consisted of and the amount of the same and for what purposes and means the assessment upon the policyholders were to be devoted, so as to put this defendant on notice. Defendant further demurs to the allegations contained in paragraph five (5) on the ground that plaintiff's petition fails to allege that this defendant had any knowledge or notice of the things therein alleged.

3

This defendant demurs to the allegations contained in paragraphs three (3), six (6), seven (7), and eight (8) of plaintiff's petition on the ground that said paragraphs and said petition fail to allege that this defendant had any notice of the facts alleged in each of said paragraphs, and upon the

further ground that the allegations contained in said paragraphs set forth mere conclusions of the pleader and fail [fol. 75] to set forth therein or attach to said petition any copy of the orders and reports referred to in said paragraphs.

4

This defendant demurs to the allegations contained in paragraph thirteen (13) of plaintiff's petition on the grounds that the insurance laws of the State of New York that plaintiff specially pleads in said paragraph is a requirement of the law of the State of New York different from that imposed by the laws of this State and of which this defendant had no notice at the time of the issuance to it of its policy designated as policy No. AC 31968, either in said policy or the laws of this State.

Defendant further demurs to the aforesaid allegations contained in said paragraph thirteen (13) of plaintiff's petition on the ground that the insurance contracts set forth in plaintiff's petition were intended to have effect in the State of Georgia and were executed in the State of Georgia in conformity to the laws of the State of Georgia and the aforesaid specially pleaded statutes of the State of New York have no force and effect in the State of Georgia.

(5 & 6 omitted.)

7

This defendant further demurs to plaintiff's petition on the ground that said petition sets forth a misjoinder of parties.

Wherefore, this defendant prays that these its several grounds of demurrer be sustained and that plaintiff's petition be dismissed with all costs upon plaintiff.

Reynolds & Brandon, Attorneys for East & West Motor Lines, Inc.

[File endorsement omitted.]

[fol. 76] In Superior Court of Fulton County

[Title omitted]

Demurrer—Filed November 6, 1939

1

Now comes the defendant named above, H. L. Bass, as Bass Bus Line and demurs generally to the petition in said case for that said petition does not set out a cause of action against him.

2

And this defendant demurs specially to the said petition for the reason that the petition does not set out the policy of insurance that plaintiff contends or claims that this defendant is indebted upon, or in consequence of.

3

Wherefore, this defendant H. L. Bass prays that said petition be dismissed as to him.

Carlisle Cobb, Attorney for Defendant.

[File endorsement omitted.]

[fol. 77] In Superior Court of Fulton County

[Title omitted]

Demurrer of Defendants Roy R. Reagin, Georgia Motor Express, Inc., S. S. Sale, d/b/a Sale Transfer Company and Southeastern Stages, Inc.—Filed November 4, 1939

Now come the named defendants and demur to the petition as follows:

1. The said petition contains a misjoinder of parties defendant.

2. The said petition contains a misjoinder of parties defendant because there is not any joint concert of action or any other joint action alleged on the part of these defendants or any of them, and also on the part of other defendants named in said petition. All of the contracts and agree-

ments of each of the defendants were separate and distinct from those of the others.

3. The said petition contains a misjoinder of causes of action.

4. The said petition contains a misjoinder of causes of action because there is not any joint concert of action or any other joint action alleged on the part of these defendants or any of them, and also on the part of other defendants named in said petition. All of the contracts and agreements of each of the defendants were separate and distinct from those of the others.

5. These defendants demur to paragraphs 6, 7, 8, 9 and 10 of the petition upon the ground that it is nowhere alleged therein whether or not the said purported assessment has been appealed to any court having appellate jurisdiction over the acts and orders therein mentioned, and it has not [fol. 78] been alleged whether or not the said assessment has thus become final.

Wherefore, these defendants pray that these their demurrers be inquired into by the court and sustained, and that an appropriate order be taken.

Howell & Post, Attorneys for Defendants Roy R. Reagin, Georgia Motor Express, Inc., S. S. Sale, d b a Sale Transfer Company and Southeastern Stages, Inc.

[File endorsement omitted.]

[fol. 79] In Superior Court of Fulton County

[Title omitted]

Demurrer—Filed November 6, 1939

And now comes the defendant, Eveready Cab Company, named as one of the defendants in the above captioned case, and subject to its plea to the jurisdiction, and without waiving its plea to the jurisdiction heretofore filed, and before filing its answer herein, files this its demurrer and for grounds of demurrer says:

1

This defendant demurs generally to said petition as a whole, for the reason that said petition fails to set out any cause of action against this defendant and that for said reason said petition should be dismissed.

2

This defendant demurs generally to said petition and says that there is a misjoinder of parties defendant in said petition, and a misjoinder of causes of action in said petition, and that the petition should be dismissed.

(3 to 15 inclusive, omitted.)

16

Defendant demurs specially to paragraph fourteen of said petition in that the pleader admits that this defendant is a resident of Clarke County and alleges no fact or thing to show the jurisdiction of this court of either the person of this defendant or of the subject matter of said suit; in that no policy or contract or other instrument upon which this action is based is attached to or embodied in said paragraph or petition showing that this defendant was or is a member of said company, or was or is governed by the rules, regulations, laws, or by-laws or constitution of said [fol. 80] company; in that nothing is alleged in or attached to said paragraph showing any liability of any nature whatsoever to the superintendent or anyone else; and that said entire paragraph fourteen should be stricken from said petition.

17

Defendant demurs specially to paragraph sixteen of said petition in that the pleader admits that this defendant is a resident of Clarke County, Georgia, and nothing is alleged or shown in said paragraph why the superior court of Clarke County should not have jurisdiction of this defendant and of the subject matter of said suit, instead of this court; and, in that nothing is alleged therein, no account or bill of particulars or anything else attached thereto, or any reason given why plaintiff should be entitled to any judgment or decree against this defendant; and that this

paragraph in so far as it concerns this defendant should be stricken.

Erwin & Nix, Attorneys for Eveready Cab Company.

Athens, Georgia.

[File endorsement omitted.]

[fol. 81] In Superior Court of Fulton County

[Title omitted]

Demurrer by J. A. Booker, Doing Business as Savannah Beach Bus Line and/or Atlantic Stages—Filed November 6, 1939

Comes now J. A. Booker, trading as aforesaid, one of the defendants in the above case and by way of demurrer to the petition, says:

1. The petition sets forth no cause of action against this defendant.

2. No copy of the insurance contracts alleged to have been purchased by this defendant are attached to the petition.

3. It does not appear from the petition, either by excerpts from an insurance contract purchased by this defendant or otherwise, how and what manner this defendant became subject to assessment as alleged.

4. It does not appear from the petition when or in what manner this defendant ceased to be a member of Auto Mutual Indemnity Company, if, as alleged, this defendant was at one time such member.

Wherefore this defendant prays that these demurrers be sustained and that said case be dismissed as to him at plaintiff's cost.

O. E. Bright & Perry Brannen, Attorneys for J. A. Booker.

[fol. 82] [File endorsement omitted.]

IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

DEMURRER—Filed November 8, 1939

Now comes the defendant, Fletcher T. Kaylor, doing business under the trade name of Kaylor Transfer Company, and files this his demurrer to the petition heretofore filed in the above stated case and for grounds of demurrer says:

1

That the petition as set forth and as served on this defendant fails to set forth a cause of action and should therefore be dismissed.

Wherefore, defendant prays that his demurrer be sustained.

Poykin & Poykin, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 83] IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

DEMURRER—Filed November 9, 1939

Now comes J. F. Murray, doing business as the Georgia Alabama Coach Line, one of the defendants in the above styled case, and files this his demurrer to the petition of the plaintiff, and for reasons therefor shows to the court the following:

1

This defendant demurs generally on the ground that the allegations of the petition set forth no cause for action.

(2 to 11, both inclusive, omitted.)

W. L. Bryan, Samuel H. Wilds, Attorneys for Defendant J. F. Murray.

Business Address: 1311 Wm-Oliver Bldg., Atlanta, Georgia. Telephone: Main 2574.

[File endorsement omitted.]

[fol. 84] IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

DEMURRER—Filed November 29, 1939

Now comes Kaler Produce Company, Cox Brothers Undertakers, Atlanta-Macon Motor Express, Inc., and Southeastern Motor Lines, Inc. and or Cedartown Bus Lines, and file these their demurrers in the above captioned case, and for grounds thereof show:

1

That said petition sets forth no cause of action, either in law or in equity against any of said defendants.

2

Because there is a misjoinder of parties defendant in said case, and that these defendants cannot be joined, either with each other or with other defendants named in this action.

3

Because plaintiff's petition is predicated upon a certain order of the courts of New York purporting to levy an assessment against each of these defendants, but it does not appear from plaintiff's petition that these defendants, or any of them, were parties to said proceedings in the courts of New York, nor served with process, either upon these defendants, or upon any officer or agent of these defendants within the State of New York and consequently such assessments are not binding upon any of these defendants.

4

Defendants demur to paragraphs five, six, seven, eight, nine and ten of plaintiff's petition, which paragraphs refer to a report filed by the superintendent of insurance in a case pending in the courts of New York and the order of the court thereon purporting to assess these defendants upon [fol. 85] the following grounds:

(a) Because said allegations are irrelevant and immaterial in this action.

(b) Because these defendants are not bound, either by the report of said superintendent of insurance or by the

order of the courts of New York thereon, these defendants not appearing to have been parties to said proceedings nor served with process, nor in any other way being subject to the orders of the said New York court for any purpose and particularly not subject thereto for the purpose of any order or judgment which would result in a judgment in personam against said defendants in this case.

(c) Because it does not appear from plaintiff's petition that these defendants, or any of them, agreed to pay any such assessments nor received their policies with knowledge or notice of any right of the plaintiff to assess them and consequently said assessments are not binding upon any of these defendants.

5

Defendants move to strike paragraph nine of plaintiff's petition upon the ground that it does not appear that they were legally served with order to show cause therein referred to, nor that the said Supreme Court of New York had any jurisdiction over these defendants.

6

Defendants demur to paragraph ten upon the ground that the New York law referred to is not binding upon any of these defendants, nor was the notice therein referred to a legal notice under the laws of this State, nor does plaintiff's petition show why said laws of New York are binding upon any of these defendants.

[fol. 86] 7

Defendants demur to paragraph twelve which alleges that defendants were members of said company, to wit: Auto Mutual Indemnity Company, upon the grounds:

(a) Said allegations are a conclusion of the pleader not authorized by other allegations in said petition.

(b) Because the petition does not show that defendants at any time became members of said company, nor that any policy issued to and accepted by these defendants stipulated that they should be members, nor that any copy of the laws of New York or of the charter of Auto Mutual Indemnity Company or of the by-laws of Auto Mutual Indemnity Company were contained in any policy issued to any of these

defendants, either in whole or in part, and that unless the same appeared these defendants could not legally be considered as members of said company or said mutual insurance association under the laws of Georgia.

8

Defendants demur to paragraph thirteen of plaintiff's petition upon the grounds:

(a) The statute of New York therein quoted was not and is not binding upon these defendants for the following reasons:

1. It does not appear that these defendants ever agreed to be subjected to said statutes of the State of New York.

2. Because said statutes do not appear to have been incorporated in any policy of insurance issued to any of said defendants.

3. Because it appears that the policies of insurance issued to these defendants were issued in the State of Georgia and subject to the laws of Georgia and it does not appear that the laws of the State of New York could fix the liabilities of these defendants.

[fol. 87] 9

Defendants further show that the plaintiff is seeking to hold these defendants liable for a purported order and judgment of the Supreme Court of the State of New York which purports to levy an assessment against these defendants, and defendants say that any such assessment by the courts of New York are null and void, it not appearing that the courts of New York had any jurisdiction over these defendants and that such judgments upon such assessments would deprive each of these defendants of their rights under the constitution of the United States and the constitution of the State of Georgia, which reads as follows:

Article 1, section 1, paragraph 3 of the constitution of the State of Georgia provides:

"No person shall be deprived of life, liberty or property except by due process of law."

Article V of amendments to the constitution of the United States reads in part as follows:

"No person shall be deprived of life, liberty, or property without due process of law."

10

That plaintiff's petition does not affirmatively show that these defendants were brought into the courts of the State of New York by due process of law, that no process from the courts of the State of New York was served upon any of these defendants in the State of New York, nor upon any agent designated by these defendants to be served by such process within the State of New York, nor served upon any officer or agent of any of said defendants residing in the State of New York nor otherwise served as contemplated by the aforesaid provisions of the constitution of the United States and of the constitution of the State of Georgia.

(Omit Para. 11.)

[fol. 88] Wherefore, defendants pray the court to sustain each and every ground of the foregoing demurrer and to strike plaintiff's petition and each and every portion thereof herein complained of.

Samuel A. Miller, Hooper & Hooper, William Woodruff, Attorneys for named Defendants.

[File endorsement omitted.]

[fol. 89] In Superior Court of Fulton County

[Title omitted]

Demurrer—Filed November 28, 1939

Comes now J. Russell, doing business as Russell Transfer Company, one of the defendants named in the above stated case, and demurs to plaintiff's petition on the following groands, to wit:

1

This defendant demurs to the petition on the ground that the allegations therein show no cause of action against this defendant and there is no cause of action set out in said petition.

2

This defendant demurs to the petition on the ground that it appears on the face thereof that the court has not jurisdiction of the person of this defendant.

3

This defendant demurs to the petition on the ground that it appears on the face thereof that the court has not jurisdiction of the subject of the action so far as this particular defendant is concerned.

4

The defendant demurs to the petition on the ground that it appears on the face thereof that said petition contains a misjoinder of parties defendant. There is a misjoinder of parties defendant because there is not any joint concert of action or any other joint action alleged on the part of these [fol. 90] various named defendants, including this defendant, or any of them. All of the contracts and agreements of each of the defendants were separate and distinct from those of the others.

5

The defendant demurs to the petition on the ground that it appears on the face thereof that said petition contains a misjoinder of causes of action. There is a misjoinder of causes of action because there is not any joint concert of action or any other joint action alleged on the part of these various named defendants, including this defendant, or any of them. All of the contracts and agreements of each of the defendants were separate and distinct from those of the others.

6

This defendant demurs to paragraphs 6, 7, 8, 9, and 10 of the petition upon the ground that it is nowhere alleged therein whether or not the said purported assessment has been appealed to any court having appellate jurisdiction over the acts and orders therein mentioned, and it has not been alleged whether or not the said assessment has thus become final.

Wherefore, this defendant prays the judgment of the court and that the petition be dismissed.

Earle Norman, Atty. for Deft. J. Russell, d/b/a Russell Transfer Co.

[File endorsement omitted.]

[fol. 91] IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

DEMURRER—Filed November 30, 1939

Now comes Continental Carriers, Inc. and files this its demurrers in the above captioned case, and for grounds thereof shows:

1

That said petition sets forth no cause of action, either in law or in equity against this defendant.

2

Because there is a misjoinder of parties defendant in said case, and this defendant cannot be joined with the other defendants named in this action.

3

Because plaintiff's petition is predicated upon a certain order of the courts of New York purporting to levy an assessment against this defendant, but it does not appear from plaintiff's petition that this defendant was a party to said proceedings in the courts of New York, nor served with process, either upon this defendant, or upon any officer or agent of this defendant within the State of New York and consequently such assessments are not binding upon this defendant.

4

Defendant demurs to paragraphs five, six, seven, eight, nine and ten of plaintiff's petition, which paragraphs refer to a report filed by the superintendent of insurance in a case pending in the courts of New York and the order of the court thereon purporting to assess this defendant upon the following grounds:

(a) Because said allegations are irrelevant and immaterial in this action.

(b) Because this defendant is not bound, either by the [fol. 92] report of said superintendent of insurance, or by the order of the courts of New York thereon, this defendant not appearing to have been a party to said proceedings nor

served with process, nor in any other way being subject to the orders of the said New York court for any purpose and particularly not subject thereto for the purpose of any order or judgment which would result in a judgment in personam against said defendant in this case.

(c) Because it does not appear from plaintiff's petition that this defendant agreed to pay any such assessment nor received its policy with knowledge or notice of any right of the plaintiff to assess it and consequently said assessment is not binding upon this defendant.

5

Defendant moves to strike paragraph nine of plaintiff's petition upon the ground that it does not appear that it was legally served with order to show cause therein referred to, nor that the said Supreme Court of New York had any jurisdiction over this defendant.

6

Defendant demurs to paragraph ten upon the ground that the New York law referred to is not binding upon this defendant, nor was the notice therein referred to a legal notice under the laws of this State, nor does plaintiff's petition show why said laws of New York are binding upon this defendant.

7

Defendant demurs to paragraph twelve which alleges that defendant was a member of said company, to wit, Auto Mutual Indemnity Company, upon the grounds:

(a) Said allegations are a conclusion of the pleader not authorized by other allegations in said petition.

(b) Because the petition does not show that defendant [fol. 93] at any time became a member of said company, nor that any policy issued to and accepted by said defendant stipulated that it should be a member, nor that any copy of the laws of New York or of the charter of Auto Mutual Indemnity Company or of the by-laws of Auto Mutual Indemnity Company were contained in any policy issued to this defendant, either in whole or in part, and that unless the same appeared, this defendant could not legally be considered as a member of said company or said mutual insurance association under the laws of Georgia.

8

Defendant demurs to paragraph thirteen of plaintiff's petition upon the grounds:

(a) The statute of New York therein quoted was not and is not binding upon this defendant for the following reasons:

1. It does not appear that this defendant ever agreed to be subjected to said statutes of the State of New York.

2. Because said statutes do not appear to have been incorporated in any policy of insurance issued to this defendant.

3. Because it appears that the policy of insurance issued to this defendant was issued in the State of Georgia and subject to the laws of Georgia and it does not appear that the laws of the State of New York could fix the liability of this defendant.

9

Defendant further shows that the plaintiff is seeking to hold this defendant liable for a purported order and judgment of the Supreme Court of the State of New York which purports to levy an assessment against this defendant, and defendant says that any such assessment by the courts of New York are null and void, it not appearing that the courts of New York had any jurisdiction over this defendant and that such judgment and assessment would deprive this de- [fol. 94] fendant of its rights under the constitution of the United States and the constitution of the State of Georgia, which reads as follows:

Article 1, section 1, paragraph 3 of the constitution of the State of Georgia provides:

"No person shall be deprived of life, liberty or property except by due process of law."

Article V of amendments to the constitution of the United States reads in part as follows:

"No person shall be deprived of life, liberty, or property without due process of law."

10

That plaintiff's petition does not affirmatively show that this defendant was brought into the courts of the State of

New York by due process of law, that no process from the courts of the State of New York was served upon this defendant in the State of New York, nor upon any agent designated by this defendant to be served by such process within the State of New York, nor served upon any officer or agent of this defendant residing in the State of New York nor otherwise served as contemplated by the aforesaid provisions of the constitution of the United States and of the constitution of the State of Georgia.

(11 omitted.)

Wherefore, defendant prays the court to sustain each and every ground of the foregoing demurrer and to strike plaintiff's petition and each and every portion thereof herein complained of.

Hooper & Hooper, Samuel A. Miller, Attorneys for Named Defendant.

[File endorsement omitted.]

[fol. 95] In Superior Court of Fulton County

[Title omitted]

Demurrer of Defendant Weathers Bros. Transfer Company, Inc.—Filed November 30, 1939

Now comes the above defendant and demurs to the petition as follows:

1. The said petition contains a misjoinder of parties defendant.

2. The said petition contains a misjoinder of parties defendant because there is not any joint concert of action or any other joint action alleged on the part of these defendants or any of them, and also on the part of other defendants named in said petition. All of the contracts and agreements of each of the defendants were separate and distinct from those of the others.

3. The said petition contains a misjoinder of causes of action.

4. The said petition contains a misjoinder of causes of action because there is not any joint concert of action or

any other joint action alleged on the part of these defendants or any of them and also on the part of other defendants named in said petition. All of the contracts and agreements of each of the defendants were separate and distinct from those of the others.

5. This defendant demurs to paragraphs 6, 7, 8, 9, and 10 of the petition upon the ground that it is nowhere alleged therein whether or not the said purported assessment has been appealed to any court having appellate jurisdiction over the acts and orders therein mentioned, and it has not [fol. 96] been alleged whether or not the said assessment has thus become final.

Wherefore, this defendant prays its demurrer be inquired into by the court and sustained, and that an appropriate order be taken.

J. L. Flemister, Attorney at Law for Weathers Bro. Transfer Co., Inc.

[File endorsement omitted.]

[fol. 97] In Superior Court of Fulton County

[Title omitted]

Demurrer of Bateman Company, Inc., Downie Brothers Circus, Kinnett-Odom Company, Inc., and Southern Stages, Inc.—Filed December 14, 1939

Come now the above named defendants, and demur to plaintiff's petition on the following grounds:

1

Generally because said petition sets out no cause of action either in law or in equity.

2

Generally because said petition sets out no contract or other liability to assessment as against these defendants.

3

Generally because said petition sets forth no validly made assessment against these defendants who appear on

the face of said petition to be and to have been non-residents of the State of New York and who are not alleged in said petition to have been parties to or to have been brought before the court in the proceedings in the State of New York in which the assessment relied upon is alleged to have been made.

4

Generally because it does not appear from said petition that these defendants are or were members of the Auto Mutual Indemnity Company subject to assessment, the allegation contained in paragraph 12 that the defendants were members during the year prior to November 10, 1937, merely stating a conclusion on the part of the pleader un- [fol. 98] supported by any facts alleged.

5

Generally because said petition shows on its face that the assessment made against these defendants was without notice to them, and because it appears that these defendants have not had their day in court, and because the proceedings in the Supreme Court of the State of New York, County of New York, wherein an assessment was made or attempted to be made against these defendants, was without due process of law and was repugnant to and violative of the due process clauses of the constitutions of the United States and of the State of Georgia, to wit, the 5th and 14th amendments to the constitution of the United States, and article 1, section 1, paragraph 3 of the constitution of the State of Georgia.

6

Generally because said petition shows on its face that the superior court of Fulton County has no jurisdiction over these defendants, it appearing therefrom that these defendants are each and all residents of Bibb County, Georgia.

7

Generally because no facts are alleged in said petition to show that there is or was in force in the State of New York any statute imposing any liability to assessment against these defendants as members or as policyholders of said Auto Mutual Indemnity Company under which these defend-

ants were subject to assessment or under which an assessment could be made against these defendants, or showing that any such statute became a part of any contract between these defendants and the company, or was binding upon these defendants, or that these defendants became members of the company so as to be bound by any such statute or that these defendants by contract assumed any such liability, such general averments as are to be found in the petition [fol. 99] constituting merely conclusions of the pleader unsupported by any facts alleged.

8

Generally because it does not appear from said petition that the policies of insurance issued by the company to these defendants were issued within the territorial limits of the State of New York or were contracts made within the State of New York or insured property located within the State of New York, and because no facts are alleged to show that the contracts were entered into subject to the laws of the State of New York so as to make any such statute or other law of the State of New York a part of such contract.

9

Specially because there is a misjoinder of causes of action, separate and distinct causes of action being asserted against separate and distinct parties, and particularly as respects the alleged "other indebtedness" of $245.00 alleged to be due by Downie Brothers Circus.

10

Specially because there is a misjoinder of parties defendant, separate and distinct causes of action being joined against separate and distinct parties.

(Omit 11 to 20, both inclusive.)

Wherefore, defendants pray that these their grounds of demurrer be sustained.

Martin, Martin & Snow, Macon, Ga.; Jones, Jones & Sparks, Macon, Ga., Attorneys for Defendants.

[File endorsement omitted.]

[fol. 100] In Superior Court of Fulton County

[Title omitted]

Additional Demurrer—Filed December 27, 1939

Now comes the defendant, H. L. Bass as Bass Bus Lines, in the case stated above, without waiving jurisdiction in said case but expressly denying the jurisdiction of the said court, within the appearance term of said court, and adds the following additional grounds to his demurrer heretofore filed in said case, to wit:

1

It appears from the allegations in said petition that there are no joint obligations on the part of the defendants in said case, and that this defendant is a resident of Clarke County, Georgia, and therefore the superior court of Fulton County, Georgia, has no jurisdiction of this defendant, and the case should be dismissed as to him.

2

It appearing from the allegations in said petition that this defendant was and is a resident of the State of Georgia when the alleged policy of insurance was written, on which the alleged assessments were made, it is not alleged whether or not this defendant purchased said policy of insurance in the State of Georgia, or the State of New York, or whether or not it was to be executed in the State of Georgia or New York. Neither is it alleged in said petition how, when or in what manner the said superintendent of insurance or the courts of the State of New York secured jurisdiction of this defendant in order to render a valid and binding order or judgment against him when he was a resident of Georgia.

[fol. 101] 3

That according to the allegations in said petition there are no joint obligations on the part of the defendants in this case, but each defendant's transaction was separate and independent, and therefore there is a misjoinder of parties and misjoinder of causes of action, and the said case should be dismissed as to this defendant.

(Omit 4.)

Wherefore, this defendant prays that this his demurrer be sustained and said case dismissed as to him.

Carlisle Cobb, G. N. Bynum, Thos. R. R., Attorneys for Defendant, H. L. Bass, as Bass Bus Lines.

[File endorsement omitted.]

[fol. 102] In Superior Court of Fulton County

[Title omitted]

Additional Demurrer—Filed August 14, 1940

Comes now J. Russell, doing business as Russell Transfer Company, one of the defendants in the above stated case, and the plaintiff having offered and had allowed, subject to demurrer, an amendment to his original petition in said case, and renews his demurrers general and special, heretofore filed, to the original petition, and to said petition as amended, and also demurs to said petition as amended on the following additional grounds, to wit:

1

The petition is defective and should be stricken, because:

(a) Plaintiff fails to allege the amount of the losses Auto Mutual Indemnity Company sustained during the time this defendant was a policyholder in said company:

(b) Plaintiff fails to allege that this defendant is being sued on an assessment covering losses sustained by Auto Mutual Indemnity Company during the time defendant was a policyholder in said company.

Wherefore, defendant prays the judgment of the court and that said petition as amended be dismissed.

Earle Norman, Attorney for Defendant.

[File endorsement omitted.]

[fol. 103] In Superior Court of Fulton County

[Title omitted]

Additional Demurrer—Filed August 12, 1940

Now come Kaler Produce Company, Cox Brothers, Undertakers, Atlanta-Macon Motor Express, Inc., Southern Motor Lines, Inc. and/or Cedartown Bus Line and Continental Carriers, Inc. and file this their demurrers to this plaintiff's petition, as amended, and for grounds of demurrer shows:

1

Said petition, as amended, sets forth no cause of action against any of these defendants.

2

The allegations of plaintiff's petition, as amended, are not sufficient to show that any of said defendants ever became a member of Auto Mutual Indemnity Company of New York, alleged mutual insurance company, nor that any of said defendants became liable to assessments as prayed for, nor that any of said defendants, at the time of accepting any policy of insurance, agreed to become members of said alleged association, nor agreed to be bound by the statutes of New York, the charter of said company, nor the by-laws of said company, nor that said defendants had either actual or constructive knowledge of the laws of New York, the by-laws or charter of said company, nor of any assessment provisions contained in any of such laws or in the charter or in the by-laws of said company.

3

Defendants specially demur to paragraph two of plaintiff's petition, as amended, and to exhibit "A" attached [fol. 104] thereto, upon the ground that said allegations are irrelevant and immaterial, it not sufficiently appearing from plaintiff's petition that any defendant is or was bound by the provisions of said charter.

4

Defendants specially demur to paragraph three of plaintiff's petition, as amended, and to exhibit "B" attached

thereto, upon the ground that said allegations are irrelevant and immaterial, it not sufficiently appearing from plaintiff's petition that the laws of New York, as therein referred to, became a part of the alleged contract between said insurance company and any of said defendants, nor that any of said defendants ever had knowledge, actual or constructive, of said laws, or ever agreed to be bound thereby.

5

Defendants demur to paragraph four of plaintiff's petition as amended, and to exhibit "B" attached thereto, upon the ground that these defendants are not concerned therewith because said petition shows said defendants have never agreed to be bound by any assessment by the courts of New York or otherwise.

6

Defendants demur to paragraph six of said petition, as amended, and to exhibit "E" attached thereto, upon the ground that said petition shows none of these defendants have ever agreed to be bound by any assessment as therein referred to, nor are they legally bound by the terms of said order.

7

Defendants demur to paragraph nine of plaintiff's petition, as amended, and to exhibit "F" attached thereto, upon the ground that said petition shows none of these defendants have ever agreed to be bound by the assessments therein referred to, nor are they legally bound under the [fol. 105] allegations of plaintiff's petition to pay the same.

8

Defendants demur to paragraph eleven of said petition, upon the ground that said petition shows none of these defendants have ever agreed to submit themselves to the insurance laws of the State of New York, nor contracted to pay any of the assessments therein referred to, nor are they legally bound to pay the same.

9

Defendants demur to paragraph twelve of plaintiff's petition, as amended, and to various parts therein referred to

in this ground of demurrer, upon the following grounds, to wit:

(a) Because the policy of insurance referred to does not contain any provisions rendering any of these defendants liable to an assessment, nor sufficiently constituting any contract by any of said defendants, express or implied, to be liable for any assessment.

(b) Because it appears that said policies are ordinary insurance policies, providing for premiums, and not containing any agreements to pay assessments, and not containing any language subjecting the holders thereof to any liability under the laws of New York, or the charter or by-laws of said company, or otherwise.

(c) Because it does not definitely appear during what period of time each of these defendants are alleged to have been members of said alleged mutual insurance company and therefore it does not appear what amount of assessment they would be liable for, if in fact liable at al-.

(d) Because the alleged "notice to policyholders" copied in said paragraph is shown to have been upon the back of said policies, and it does not appear that any reference was made to the same in the body of the policies and hence [fol. 106] said portion is not admissible in evidence nor binding on these defendants. Said provisions are further inadmissible and irrelevant because they do not make any agreement upon the part of any defendant to pay any assessment, but the language thereof is vague and ambiguous, and if construed according to the rules of law, expressly make said policy as a nonassessable policy.

(e) Because the by-laws of the company referred to in said paragraph are irrelevant and immaterial, it not appearing that these defendants, or any of them, were in any manner bound by said by-laws, nor given legal notice of the existence of the same.

10

Defendants demur to paragraph thirteen of plaintiff's petition, as amended, upon the grounds:

(a) Because, the by-laws therein referred to were not made a part of the policy nor expressly referred to therein, nor by implication made a part of said policy nor are they

legally binding upon any of these defendants, but on the other hand, are irrelevant and inadmissible.

(b) Because all references to the New York law contained in said paragraph thirteen should be stricken, it not appearing that said defendants, or any of them, were given legal notice of the laws of New York, nor did they agree to be bound by the terms thereof, nor are said laws binding upon these defendants.

Wherefore, these defendants move the court to strike plaintiff's petition, as amended, and each and every portion or paragraph, or exhibit in connection therewith, upon the grounds and for the reasons as set forth in this demurrer.

Wm. Woodruff, Hooper, Hooper & Miller, Attorneys for Defendants above named.

[fol. 107] Due and legal service of the foregoing demurrers acknowledged, copy received, all other and further service waived.

Powell, Goldstein, Frazer & Murphy, Attorneys for Plaintiff.

This August 9th, 1940.

[File endorsement omitted.]

[fol. 108] In Superior Court of Fulton County

[Title omitted]

Additional Demurrer—Filed August 10, 1940

Come now Bateman Company, Inc., Downie Brothers Circus, Kinnett-Odom Company, Inc., and Southern Stages, Inc., and renew each and every ground of their demurrers, both general and special, to plaintiff's petitioner as amended, and in addition to the grounds set forth in the original demurrer add the following grounds:

1

Generally because it affirmatively appears from paragraph 12 of said petition as amended that there is no reference in the policy to the power of the Auto Mutual Indemnity

Company to assess its policyholders except a reference printed on the back of the policy which is not a part of the policy itself and which is not notice to any of these defendants, as they are bound only by the contents of the policy contract.

2

Generally and specially to paragraph 12 as amended because neither said paragraph nor the exhibit attached which is referred to in said paragraph shows where said policies were issued, and it does not affirmatively appear that any of said insurance policies were issued within the State of New York, and because no facts are alleged to show that the contracts were entered into subject to the laws of the State of New York so as to make any statute or other law of that State a part of such contract.

3

Generally as to Downie Brothers Circus and Southern [fol. 109] Stages, Inc., because it affirmatively appears from the petition as amended that when a member of the Auto Mutual Indemnity Company ceased to be a policyholder, he at the same time ceased to be a member of the corporation, and this being true, neither of these two defendants was a member at the time of the institution of any of the proceedings instituted in the courts of the State of New York, and neither of these defendants was represented in said proceedings by said insurance company, or otherwise, so that neither of these two defendants is in any way bound or affected by said proceedings.

4

Specially as to Bateman Company, Inc., because it affirmatively appears from the petition as amended that Bateman Company, Inc., if it ever was a member of said insurance company, ceased to be a member as respects all except three of the policies enumerated opposite its name in paragraph 14 of the petition before November 10, 1937, and, as to all except three of said policies, was not a member on that date or at the time of the institution of any of the proceedings in the courts of the State of New York, and was not represented in said proceedings by said insurance company or otherwise, so that said Bateman Company, Inc. is not in

any way bound or affected by said proceedings as respects any of said policies except the last three, if indeed Bateman Company, Inc. was ever at any time a member.

5

Defendants demur specially to paragraph 13 of the petition as amended and particularly to sections b, c and d wherein plaintiff attempts to plead the law of New York, for that the same constitute conclusions of the pleader unsupported by any facts alleged, and for the further reason that it affirmatively appears from the petition that the defendants were not members of said insurance company and [fol. 110] did not contract with reference to or subject to the laws of the State of New York and are not bound or affected thereby, it not appearing that the policies issued to defendants were issued or delivered or received by defendants or contracted for by defendants within the territorial limits of the State of New York.

6

Generally to said petition as amended because it affirmatively appears therefrom that on the 24th day of November, 1937, the Auto Mutual Indemnity Company was ordered, adjudged and decreed to be insolvent, and on the same day, by the same order, the corporate charter of the Auto Mutual Indemnity Company was forfeited and annulled and the corporation was dissolved. On and after said date said insurance company ceased to be a party to said proceedings and at no time thereafter were these defendants represented in said proceedings by said insurance company. All of the proceedings which resulted in fixing and levying an assessment against the policyholders of said company were subsequent to the time when said corporation ceased to be a party to said proceedings; so that these defendants were not represented in said proceedings by themselves or by said insurance company and are not bound or affected by the same.

Wherefore, Defendants pray that these their grounds of demurrer be sustained.

Martin, Martin & Snow, Jones, Jones & Sparks, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 111] In Superior Court of Fulton County

No. 127,387

Louis H. Pink, As Superintendent,

vs.

A. A. A. Highway Exp., Inc., et al.

Order Sustaining Demurrers and Dismissing Petition—August 22, 1940

This case coming on for a hearing on general and special demurrers of

Service Coach Line, Inc.
H. A. Adams, trading as Adams Transfer Co.
A. A. A. Highway Express, Inc.
East and West Motor Lines, Inc.
H. L. Bass, as Bass Bus Line.
Roy H. Reagin.
Georgia Motor Express, Inc.
S. S. Sale, Sale Transfer Co.
Southeastern Stages, Inc.
Eveready Cab Co.
J. H. Booker, d/b/a Sav. Beach Bus Line and/or Atlantic Stages.
Fletcher T. Kaylor, d/b/a Kaylor Transfer Co.
J. T. Murray, d/b/a Georgia Alabama Coach Line.
Kaler Produce Co.
Cox Bros. Undertaking Co., Inc.
Atlanta Macon Motor Express, Inc.
Southeastern Motor Lines, Inc., and/or Cedartown Bus Line.
J. Russell, d/b/a Russell Transfer Co.
Continental Carriers, Inc.
Bateman Co., Inc.
Downie Bros. Circus.
Kinnett Odum Co., Inc.
Southern Stages, Inc.
Marchman's Drive Yourself, Inc. and/or Dime Taxi Co. and Yellow cabs,

to plaintiff's petition, after argument of counsel, and upon due consideration of plaintiff's petition, as amended, together with all exhibits attached, particularly the copy of

contract with defendants, it is considered, ordered, and adjudged that the petition as amended fails to set forth a cause of action, it being the judgment of the Court that said petition fails to make out a case of liability for assessment against the several defendants. The general demurrers are therefore sustained, and the plaintiff's petition is dismissed.

This the 22nd day of August, 1940.

(Signed) Paul S. Etheridge, Judge, S. C. A. C.

[fol. 112] In Superior Court of Fulton County

No. 127,387. Fulton Superior Court

Louis H. Pink, as Superintendent,

vs.

A. A. A. Highway Exp. Inc., et al.

Order Amending Order Sustaining Demurrers—August 23, 1940

The order passed August 22, 1940, sustaining the general demurrers in the foregoing case, is hereby amended as follows:

It is considered, ordered, and adjudged that this case is a bill in Equity; that there is no mis-joinder of parties, or of causes of action, and those demurrers directed against the petition on the ground of mis-joinder are overruled.

This the 23rd day of August, 1940.

Paul S. Etheridge, Judge, S. C. A. C.

[fol. 113] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 114] [File endorsement omitted.]

[fol. 115] IN SUPREME COURT OF GEORGIA

No. 13549

PINK, Superintendent,

v.

A. A. A. HIGHWAY EXPRESS INC. et al.

OPINION—January 16, 1941

By the COURT:

1. Construing the amended petition as a whole, most strongly against the pleader, the averment therein that "all the defendants were policyholders and members of the company during the year prior to November 10, 1937," is held to be an averment that the defendants were members because they were policyholders.

2. When a court of the domicile of an insolvent mutual insurance corporation, having acquired jurisdiction thereof, proceeds according to the applicable statutes to determine the necessity for, and to fix by its decree, the amount of an assessment against those who became members of such corporation in accordance with the laws of the State under which it was organized, whether or not such decree is conclusive as to the necessity for and the amount of such assessment when asserted against policyholders who were nonresidents of the domiciliary State, not personally served, and who did not personally appear therein, it is not necessary to decide.

3. Such a decree, as to policyholders who were not made parties to the original proceedings, was not conclusive on the question whether their relation to the corporation was such as to subject them to such liability.

4. If liable at all, the defendants are so only because their contracts constituted them members of the corporation. Whether or not these made them personally liable for the assessments will be determined by the law of this State when such liability is asserted against them in the courts of [fol. 116] this State, in the absence of any showing that the contracts were entered into in some other State or were to

be performed in some other State, and the law of such other State, if any, governing contracts of this character not being set forth.

5. Applying the law as found in our statutes and as expounded by our courts and in harmony with the principles of general law not in conflict therewith, it must be held that the mere acceptance of a policy of indemnity insurance issued for a stated premium, by a company that bears the name "mutual," but is not shown to have a lodge system with ritualistic form of work and representative form of government, with a statement in the policy that by acceptance of the policy the insured agrees that it "embodies all agreements existing between himself and the company or any of its agents relating to this insurance," does not make the policyholder a member liable to assessment in accordance with the laws of the State of the company's domicile, although on the back of the policy under the heading, "Notice to policyholders," there is printed a statement that "The contingent liability of the named insured under this policy shall be limited to one year from the expiration or cancellation hereof and shall not exceed the limits provided by the insurance law of the State of New York, or of the State in which the insured is domiciled and/or this policy is written," there being in the face of the policy no reference to any contingent liability or assessment, or to any law providing for such. This is true notwithstanding the charter of the company provides that the members shall be the policyholders, that its by-laws provide that every member shall be liable to assessment, and that the insurance law of the State of the company's domicile contains a like provision.

6. The court did not err in sustaining the general demurrer.

[fol. 117] This suit was brought by Louis H. Pink, superintendent of insurance of the State of New York, jointly against A. A. A. Highway Express Inc. et al., the defendants being approximately twenty-five in number, seeking to collect from them assessments levied in New York against all members of Auto Mutual Indemnity Company, an insolvent insurance corporation, the defendants in this case being alleged to be such members. The defendants are

residents of the State of Georgia, and one or more of them residents of Fulton County, where the suit was instituted. The allegations of the petition were substantially as follows: The Auto Cab Mutual Indemnity Company was incorporated under article 10-B of the insurance law of the State of New York, on May 26, 1932, as a mutual automobile casualty insurance company. With approval of the Insurance Department of the State of New York, its name was changed, on February 21, 1933, to Auto Mutual Indemnity Company, and is hereinafter referred to as the company. All provisions of the charter and amendment relevant to the issues in this case were attached as an exhibit. On the application of the superintendent of insurance of the State of New York, an order was made by the Supreme Court of that State, placing the company in rehabilitation pursuant to article 11 of the insurance law of that State, the order being duly filed of record. All sections of article 11 and all of the aforesaid order relevant to the issues in the case were attached as exhibits. The company being insolvent, it was placed in liquidation on that ground, by an order of the Supreme Court of the State of New York, made, entered, and filed in the office of the clerk of the New York court on November 24, 1937, and all of that order relevant to the issues in the case was attached to the petition as an exhibit. The liquidation proceedings were entitled "In the matter of liquidation of the Auto Mutual Indemnity Company," and those proceedings are still pending.

[fol. 118] Pursuant to section 422 of the insurance law of the State of New York, on February 4, 1938, which was within one year from the date of the entry of the orders of rehabilitation and liquidation, the superintendence of insurance filed in said proceedings a report setting forth the reasonable value of the assets of the company, its probable liabilities, and the probable necessary assessment to pay all allowed claims in full. That report being quite voluminous, it was not set out or attached as an exhibit, but petitioner promised to introduce it into evidence at the trial. Upon the basis of that report, pursuant to section 422, an order was made by the New York Supreme Court, on February 7, 1938, directing that an assessment of forty per cent of premiums earned during the preceding year be levied against all members of the company, against whom an assessment might have been levied on November 10, 1937, the

date of the commencement of the proceedings against the company. This order was duly filed, a copy of it being attached to the petition as an exhibit. The superintendent thereupon computed the amount of assessment due from each policy, and, pursuant to section 432 of the insurance law of New York, computed the amount of indebtedness of each member to the company apart from the indebtedness for assessment. These computations were attached as an exhibit, showing the names of the defendants, their residences, the numbers of their policies, the premiums earned, and the amount of assessment for which such member was liable. On the basis of the report an order was made, August 12, 1938, which, together with the petition, report, and exhibits of the superintendent, was duly filed in the office of the clerk of the New York court, the order directing each member during the year previous to November 10, 1937, to pay the amount assessed against him to the superintendent of insurance. The order further directed, that, [fol. 119] failing to make such payments, the members were to show cause, on September 29, 1938, why they should not be held liable to pay such assessments, together with costs, and why they should not be held liable to pay any other indebtedness which they might owe the superintendent of insurance, and why the superintendent should not have judgment therefor. This order was attached to the petition as an exhibit. Pursuant to section 422 of the insurance law of New York, notice of this order was mailed to all of the members of the company, including each of the defendants in this case. None of the defendants appeared to show cause, nor have they made payment as directed. All of them were policyholders of the company during some part of the year before November 10, 1937.

A copy of the policy issued to each of the defendants was attached, being merely a form policy, but alleged to be the type of policy contemplated in the court's order of February 7, 1938, above referred to. While these policies provided that the insured should be entitled to "an equitable participation in the funds of the company in excess of the amounts required to pay all policy and other obligations," etc., and were headed or captioned "Auto Mutual Indemnity Company (a mutual insurance company)," they did not otherwise contain any reference to the laws of the State of New York, or to any particular law of that State, or to

the charter or by-laws of the company, or to the policyholder as a "member," or to any liability for assessment. The policy declared that it embodied "all agreements existing between" the policyholder and the company, and mentioned nowhere that the assured would be liable for any assessment of any nature. It is true, on the back of the policy, but not in the face of the policy itself, there were printed paragraphs entitled, "What to do and what not to do in case of accident," "Safety code reminders," and "Notice to policyholders," each containing subparagraphs, and under the last-named heading the policyholder was notified that he was a "member" of the Auto Mutual In-[fol. 120] demnity Company, and entitled to vote at all meetings of the company, and stating when and where those meetings would be held, and that "the contingent liability of the named insured under this policy shall be limited to one year from the expiration or cancellation hereof, and shall not exceed the limits provided by the insurance law of the State of New York." At the time each of the defendants purchased his policy and became a member of the Auto Mutual Indemnity Company there was in force a statute of the State of New York, which (as the petitioner alleged), under the statutes and court decisions of New York, became a part of his contract binding upon him, to wit, section 346 of the insurance law of the State of New York, which provides: "The corporation shall in its by-laws and policies fix the contingent mutual liability of the members for the payment of losses and expenses not provided for by its admitted assets; but such contingent liability of a member shall not be less than an amount equal to twice the amount of, and in addition to, the cash premium provided for in the policy, except that a corporation which has amended its charter to provide for the transaction of additional kinds of insurance may amend its by-laws to provide that the contingent mutual liability of a member shall not be less than an amount equal to, and in addition to, the cash premium provided for in the policy. Every member shall be liable to pay, and shall pay his proportionate part of any assessment which may be laid by the corporation in accordance with law and his contract on account of losses and expenses incurred while he was a member, if he is notified of such assessment within one year after the expiration of his policy. All assessments, whether levied by the board of

directors, by the superintendent of insurance in the liquidation of the corporation, or otherwise, shall be for no greater amount than that specified in the policy or by-laws." The names and addresses of the defendants, the numbers of their policies, the period for which each was alleged to be [fol. 121] liable to assessment, and the amount of judgment prayed against each, was set forth in the petition. There was also attached a copy of a portion of the by-laws to the effect that "the members of the corporation shall be the policyholders herein," in accordance with the provisions of the corporation's charter.

By amendment the plaintiff alleged that the action presents a common right to be established by the plaintiff against the several defendants named in the petition, and that it is proper that a court of equity determine the whole matter in one action; and that by so doing a multiplicity of actions will be avoided, speedy and effectual relief will be granted, and unnecessary costs will be obviated. By further amendment the petitioner averred that he would present to the court on the trial of the case the acts of the legislature of the State of New York, referred to in the petition, duly authenticated by the great seal of that State, and would present the records and judicial proceedings referred to, duly attested under the seal of the court, all as is provided by section 38-627 of the Code of Georgia, and by the United States Revised Statutes, section 905, title 28, section 687. Petitioner contended, that said public acts, judicial proceedings, and records of the State of New York are entitled to and should receive full faith and credit in the courts of this State and in this proceeding, as is specifically provided in section 38-627 of the Code of Georgia of 1933, and by article 4, section 1 of the constitution of the United States (Code, § 1-401); and that any judgment which denies or has the effect of denying to the judgments and statutes aforesaid, the full force and effect to which they are entitled under the constitution and laws aforesaid, abridges the privileges and immunities of petitioner as a citizen of the United States, contrary to the fourteenth amendment [fol. 122] of the constitution of the United States. Petitioner prayed that second originals issue directed to the sheriffs of all counties in which the defendants reside, for service upon every defendant residing outside of Fulton County; and that petitioner have judgment against each defendant for principal, interest, and costs.

The defendants filed general demurrers, which fall into two categories in so far as the defendants are concerned, as follows: that the policies issued to each of the defendants were not assessable, since they contained no provisions for assessment; and that some of the defendants were not policyholders of the Auto Mutual Indemnity Company at the time of its dissolution, and for that reason are not subject to assessment. The general demurrer of each defendant was sustained, and the plaintiff excepted.

GRICE, Justice:

1. The pronouncement made in the first headnote will not be discussed. See Strickland v. Lowry National Bank, 140 Ga. 653 (79 S. E. 539); Anderson v. Anderson, 150 Ga. 142 (103 S. E. 160).

2. Touching the proposition of law referred to in the second headnote, see Swing v. Humbird, 94 Minn. 1 (101 N. W. 938); Hawkins v. Glenn, 131 U. S. 319 (9 Sup. Ct. 739, 33 L. ed. 184); Great Western Tel. Co. v. Purdy, 162 U. S. 329 (16 L. ed. 810, 40 L. ed. 986); Glenn v. Liggett, 135 U. S. 533 (10 Sup. Ct. 867, 34 L. ed. 262); Selig v. Hamilton, 234 U. S. 652 (34 Sup. Ct. 926, 58 L. ed. 1518); and the authorities collected in Chandler v. Peketz, 197 U. S. 609 (56 Sup. Ct. 602, 180 L. ed. 881, and citations in the note. The rule referred to is based on the theory that in [fol. 123] litigation to which the corporation is a party its stockholders are represented by it to the extent that they are bound by any judgment rendered against the corporation in so far as it relates to corporate matters; and that the action of the court in determining the necessity for, and fixing the amount of, the assessments, is merely performing a duty which would have fallen on its directors had it continued to be a going concern; the court substituting its decree for the formal call of the directors, which call is ordinarily a prerequisite to fixing an individual liability on the stockholders. As shown by the citations above, the same principle has been applied to mutual assessment insurance companies; but, as indicated above, it is not necessary to decide whether the principle contended for is sound.

3. The turning point in the case is whether or not the defendants, who were not parties to the original proceeding, are so far concluded by the decree rendered therein

as to prevent them from showing that their relation to the corporation was not such as to subject them to liability for assessment. When we refer to their not being parties to the original proceeding, we mean that they were not personally served, and that they have not had their day in court for the purpose of asserting their non-liability. It is the insistence of the plaintiff, that these policyholders were represented in the New York litigation, and are bound by the decision of the court therein; and that while certain personal defenses are still available to them, they are not the type of defenses such as are here raised; that when it is admitted, as the demurrer does, that they were policyholders, they became members; and that the decree of the New York court adjudging that the members were liable to the assessments in the amount sued for was binding on them when sued by the superintendent of insurance seeking to recover a judgment therefor in personam against them. [fol. 124] Let us bear in mind that the rationale of the rule contended for, to wit, that the court of the domicile of an insolvent corporation the affairs of which are being administered by a receiver may determine that an assessment is necessary, and fix the amount of it. Although these defendants were not parties to the original proceeding, the corporation was. As to those policyholders not personally served in the New York court and who did not personally appear therein, all the decree could have done was to determine the necessity for and amount of assessment, and to call on the members to pay. This was all the directors could have done; and this was at most all the court could do, unless the policyholders were made parties to that proceeding, so as to be personally bound by other matters adjudicated therein. If in that suit it was asserted that certain policyholders were members of the company and were liable in a certain amount because they were members, and such policyholders were not personally served and did not appear, an adjudication that they were liable because under the New York law they were members is not conclusive on them. Whether they were members or not was vital on the question of their liability to assessment. On such an issue they are not bound until they have had an opportunity to contest it.

Counsel for the plaintiff take the position that to deny the element of conclusiveness to the decree of the New York

court upon the question of the liability of each of the defendants to assessments would be to refuse to give effect to the full-faith and credit-clause of the constitution of the United States. The answer to that contention is, that before that constitutional provision can become operative one must have had his day in court; and over against it we place the other guaranty, to wit, the due-process clause; and it is of the essence of due process that one must be [fol. 125] given an opportunity to be heard. Walton v. Davis, 188 Ga. 56, 62 (2 S. E. 2d, 603), and cit. In Great Western Telegraph Co. v. Purdy, 162 U. S. 329, supra, after holding that the order of assessment was conclusive and binding on every stockholder without personal notice to him, it was said: "But the order was not, and did not purport to be, a judgment against any one. It did not undertake to determine the question whether any particular stockholder was or was not liable in any amount. It did not merge the cause of action of the company against any stockholder on his contract of subscription, nor deprive him of the right, when sued for an assessment, to rely on any defense which he might have to an action upon that contract. In this action, therefore, brought by the receiver in the name of the company, as authorized by the order of assessment, to recover the sum supposed to be due from the defendant, he had the right to plead a release, or payment, or the statute of limitations, or any other defense, going to show that he was not liable upon his contract of subscription."

Their liability to assessment depends upon whether or not they became members of the company. A person can not be made a member or stockholder of a corporation without his consent. 18 C. J. S., § 478, note 42, and cit. It was incumbent on the plaintiff to show that these defendants became members, in order to subject them to the payment of the assessment, the necessity for and amount of which was determined by the decree of the court wherein the corporation had its domicile. As to this, all that is shown is that they purchased a policy in a mutual insurance company, organized under the laws of the State of New York, which laws provide that a policyholder is a member and liable to assessment. This is not sufficient. New York Life Insurance Co. v. Street (Tex. Civ. App.), 265 S. W. 397, and cit. Couch's Cyclopedia of Insurance Laws, § 251 et seq.

[fol. 126] The Supreme Court of Minnesota had the identical question, in Swing v. Humbird, 94 Minn. 4 (101 N. W. 938). It was there ruled: "Action to recover upon an assessment of the policyholders of an insolvent mutual insurance company, made by a court having jurisdiction to wind up its affairs. *Held:* 1. Such assessment is not conclusive upon any policyholder as to the question whether his relation to the company was such as to subject him to liability for an assessment." In Shuey v. Adair, 24 Wash. 378 (64 Pac. 536), in answering the contention of the receiver that the order was conclusive even as to the liability of each stockholder for the amount assessed against him, the court observed: "But if this be true, it would seem there was little need for the present action. To give the order the force and effect here contended for is to give it the force and effect of a judgment, and there could be no reason why an execution should not issue directly upon the order without the further intervention of the courts."

It was ruled by the Court of Appeals of New York as follows: "An order of the United States district court directing an assessment upon the stockholders of a certain amount per share to meet a deficiency in the assets of a bankrupt corporation to meet its obligations to its creditors was not, in a subsequent action in a State court for the assessment, conclusive upon the existence or non existence of an obligation on the part of the stockholders to pay the assessment." Southworth v. Morgan, 205 N. Y. 293 (98 N. E. 491, 51 L. R. A. (N. S.) 56). In the opinion it was said: "It is urged by the respondent, at this point, that the order of the United States district court directing the assessment of the shares of the defendant conclusively determined the validity and the amount of the assessment. It is true that the regularity and validity of the proceeding in that court and its conclusions can not be attacked in [fol. 127] this action; but the existence or non-existence of an obligation on the part of the defendant to pay the assessment was not within the subject-matter of which that court took jurisdiction. To enable the plaintiff to enforce the liability of the delinquent shareholders to the extent only which the deficiency in the corporate assets required, and to effect parity of contribution between them, it was necessary that an account of the assets and debts, of the entire amount of the capital remaining unpaid upon the issued shares, and the part of the face value of his shares

unpaid by each stockholder, should be taken, and the aggregate assessment required equitably rated by the court, and it is upon those issues that its order is beyond attack in this action. Great Western Telegraph Co. v. Purdy, 162 U. S. 329, 16 Sup. Ct. 810, 40 L. ed. 986; Howarth v. Angle, 162 N. Y. 179, 56 N. E. 489, 47 L. R. A. 725. In the former case the court, speaking of an analogous order of a court of Illinois, said: 'But the order was not, and did not purport to be, a judgment against any one. It did not undertake to determine the question whether any particular stockholder was or was not liable in any amount. It did not merge the cause of action of the company against any stockholder on his contract of subscription, nor deprive him of the right, when sued for an assessment, to rely on any defense which he might have to an action upon that contract."

We find nothing in Howard v. Glenn, 85 Ga. 238, 264 (11 S. E. 610, 21 Am. St. R. 156), contrary to the above holdings. That was a suit against Glenn for his unpaid subscription to capital stock. In the opinion we find this: "In the present case the main issue was, whether the plaintiff in error was a subscriber to the stock of the National Express and Transportation Company. It was affirmatively alleged in the declaration that he was: *and if he was such* [fol. 128] *subscriber* [italics ours], his liability under the facts of the case was clear and unmistakable." So we may concede here, that if the defendants were members of the corporation, they would be liable. But, as in that case so in this, whether they were or not, was a proper inquiry in the present suit.

The oral arguments in the instant case were unusually strong, and the briefs filed in support thereof were excellent. It would unduly prolong this opinion to notice all branches of the argument or to analyze all the authorities cited. All of them have been considered and examined. We may, however, make a brief reference to some of the stronger of them. Stone v. Old Colony St. Ry. Co., 212 Mass. 459 (99 N. E. 218), is relied on. That decision, while holding that the decree of a foreign court in receivership proceedings against an insolvent insurance company within its jurisdiction, levying an assessment on policyholders, is conclusive, in a suit against a policyholder in another State, of the receiver's authority to enforce any contract liability of the defendant for the assessment, and of the amount re-

quired, also holds that it does not preclude a defendant from asserting that it is not liable.

In Stone v. Penn Yan, K. P. & B. Ry., 197 N. Y. 279 (90 N. E. 843), also relied upon, the ruling was: "Where policies issued by a foreign assessment-insurance company stipulated that if the premium charged is insufficient to pay losses the directors might charge a pro rata additional sum to make up the deficiency, insured, though not a party in insolvency proceedings against insurer, was bound by an order of the foreign court directing an assessment so far as the necessity for making the assessment was determined; but the decree was subject to direct attack in a suit by the foreign receiver, and insured could show that it was not liable either by reason of payment or of release or of run- [fol. 129] ning of limitations or of any other legal defense." Here again, it is to be observed, the New York court held that the policyholder was by the decree concluded only on the question as to the necessity for making the assessment. Nor did the ruling in Longworthy v. Gardner, 74 Minn. 325 (77 N. W. 207), strongly relied on by the plaintiff, go any farther. The decision in Supreme Council of the Royal Arcanum v. Green, 237 U. S. 531 (35 Sup. Ct. 724, 59 L. ed. 1089, L. R. A. 1916A, 771), recognizes the same distinction as to what matters the decree of the foreign court is held to be conclusive.

5. Having determined that these policyholders are not by the New York decree concluded on the question as to whether or not they became members and as such liable to assessment, the next inquiry is this: Was there anything in their contracts with the companies, to wit, the policies themselves, which constituted them members? This involves a proper construction of the contract; that is, what is its legal import? In ascertaining this, the law of what State shall be applied? The policy is that of a company chartered in the State of New York, but a contract of insurance is made, not where the policy was executed, but where it was in fact delivered. Swing v. Dayton, 196 N. Y. 503 (89 N. E. 1113); Mutual Life Insurance Co. v. Hill, 193 U. S. 551, 24 Sup. Ct. 538, 48 L. ed. 788); McClement v. Supreme Court I. O. F., 88 Misc. 475 (152 N. Y. Supp. 136), and the many other authorities there cited. If the question would ordinarily be referable to the lex loci contractus, it is enough to say that as to where the contract was made the

petition is silent, leaving us without chart or compass. For that reason also we are not here concerned with the rule that, as to a contract made in another State that was one of the original thirteen, or carved from the territory of one of them, and sued upon in this State, we will presume the common law to be of force in such other State. Trustees [fol. 130] of Jesse Parker Williams Hospital v. Nisbet, 189 Ga. 807; Alropa Corporation v. Pomerance, 190 Ga. 1. Nor whether the court of the forum will decline to apply the law of the situs when the application of such law would contravene the established public policy of the forum. Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U. S. 143 (54 Sup. Ct. 634, 78 L. ed. 1468, 92 A. L. R. 928, and cit.; Ulman & c. Woolen Co. v. Magill, 155 Ga. 555, 117 S. E. 657), and cit. In such a situation, we find the correct rule stated in Pritchard v. Norton, 106 U. S. 124 (1 Sup. Ct. 102, 23 L. ed. 248): "The rule deduced by Mr. Wharton, Conflict of Laws, section 401, as best harmonizing the authorities and effecting the most judicious result, and which was cited approvingly by Mr. Justice Hunt in Scudder v. Bank, 91 U. S. 406, 411 [23 L. ed. 245], is that 'Obligations in respect to the mode of their solemnization are subject to the rule locus regit actum; in respect to their interpretation, to the lex loci contractus; in respect to the mode of their performance, to the law of the place of their performance. But the lex fori determines when and how such laws, when foreign, are to be adopted, and, in all cases not specified, supplies the applicatory law.' This, it will be observed, extends the operation of the lex fori beyond the process and remedy, so as to embrace the whole of that residuum which can not be referred to other laws. And this conclusion is obviously just; for whatever can not, from the nature of the case, be referred to any other law, must be determined by the tribunal having jurisdiction of the litigation, according to the law of its own locality." In addition to planting the rule on the basis of necessity, it can safely rest on still another foundation, to wit, it ought to be assumed that if it be true that the contract was made elsewhere, and if the law of such other State be different from that of the forum, and more favorable to plaintiff, [fol. 131] such facts would have been made to appear from the petition.

the by-laws of the company are not to be considered unless they are made a part of the policy." Lee v. Missouri State Life Insurance Co. (Mo. App.), 238 S. W. 858. "One purchasing policy of mutual insurance company *held* not by that act alone to have become a stockholder in company, chargeable with notice of mutual features in its charter * * * Status of stockholder in mutual insurance company can arise only by consent expressed or implied." New York Life Ins. Co. v. Street (Tex. Civ. App.), 265 S. W. 397.

There are numerous cases holding that a mutual insurance company may issue policies on a cash premium and to policyholders who do not become members. Typical of these are Buck v. Ross, 59 S. D. 492 (240 N. W. 858); Johnson v. School District, 128 Oregon, 9 (273 Pac. 386). See Greenlaw v. Aroostock County Patrons Mutual Fire Ins. Co., 117 Me. 514 (105 Atl. 116); New York Life Ins. Co. v. Street (Tex. Civ. App.), 265 S. W. 397; Watts v. Equitable Mutual Life Assn., 111 Iowa, 90 (82 N. W. 441); Lee v. Missouri State Life Ins. Co. (Mo. App.), supra. See particularly Dwinnell v. Kramer, 87 Minn. 392 (92 N. W. 227), where it was held that the policyholder in such company is liable to assessment—"For losses not simply in accordance with his contract. Any such company may fix the contingent mutual liability of its policyholder not merely by its by-laws, but by its policies and the 'total amount of the liability of the policyholder shall be plainly and legibly stated in the face of each policy.' * * * We accordingly hold that the defendants are not liable upon this policy, contingently or otherwise, in any amount in excess of the cash premium therein named." Many other authori- [fol. 132] ties might be cited, and the decision extended, but it does not seem necessary. In a recent case, brought by the same plaintiff in the district court of the United States for the middle district of Georgia, a similar issue was involved, and the decision therein is in harmony with the views herein expressed. Pink v. Georgia Stages Inc., 35 Fed. Supp. 437. Our conclusion is that the defendants by merely accepting these policies did not thereby become members so as to subject them to assessment.

The notation on the back of the policy referred to in the preceding statement of facts was not a part of the policy, and therefore not a part of the contract. On the contrary, the policy specifically negatives this. 14 R. C. L. 934. The

terms of the policy not only fail to put the defendant on notice that he was accepting a policy in a company which was subject to assessments under the laws of the State of New York, but fail in any wise to suggest that the company issuing the policy was an assessment company at all. The only provisions in the policy which throw any light upon the nature and character of the company are such as would merely indicate that it was mutual in character, and that the policyholders would be entitled to participate in the profits and surplus which might be derived from the operation of the company.

6. Since no other contract appears to which the defendants were parties, it follows that the suit was properly dismissed on general demurrer.

Judgment affirmed. All the Justices concur.

[fol. 133] IN SUPREME COURT OF GEORGIA

L. H. PINK, Superintendent of Insurance of New York,

v.

A. A. A. HIGHWAY EXPRESS, INC., et al.

JUDGMENT—January 16, 1941

This case came before this court upon a writ of error from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

[fol. 134] IN SUPREME COURT OF GEORGIA

[Title omitted]

MOTION FOR REHEARING ON BEHALF OF LOUIS H. PINK, SUPERINTENDENT, PLAINTIFF-IN-ERROR—Filed January 27, 1941

Now comes Louis H. Pink, Superintendent of Insurance of the State of New York, plaintiff-in-error, and during the

term which the judgment sought to be reviewed was rendered, and before the remittitur in the case has been forwarded to the Clerk of the Trial Court, files this his motion for rehearing and a vacation of the judgment of affirmance entered in this case.

1

Plaintiff-in-error will show that this Court has overlooked material facts in the record, the statutes of Georgia and of New York, decisions of the Supreme Court of Georgia and of the United States Supreme Court, which are controlling authorities and would have required a different judgment from that rendered.

2

The material and controlling fact overlooked by the Court is that the insolvent corporation, Auto Mutual Indemnity Company, was a party to the New York litigation. The [fol. 135] Court's statement (page 10 of the opinion) "the corporation was not a party" is erroneous. In the original petition (paragraphs 3 and 4, R. p. 1), appears an allegation that the Company was placed in liquidation on the ground of insolvency by order duly entered, and in the record (page 33, Exhibit "C" to the petition) is a judgment finding that the Court acquired jurisdiction of the Company through consent of the Board of Directors in accordance with Section 401 of the Insurance Law of New York.

It, therefore, affirmatively appears not only that the Company was before the Court when the order was entered, but that the very question of service was passed on by the domiciliary court having jurisdiction.

It is clear that the opinion of this Court, considered en banc, contained a finding that the corporation was not a party. We most respectfully insist that had the opinion shown the contrary, this Court would not have reached the conclusion announced. Indeed, we insist that had the learned Judge, who prepared the opinion, treated this case as one in which the Company was before the domiciliary court in insolvency proceedings, he would have reached a different conclusion. We say this because in the case chiefly relied on by this Court, Southworth v. Morgan, 205

N. Y. 293, 98 N. E. 491, the assessment was by a bankruptcy court in New York and not the court of the domicile (New Jersey). That opinion recognizes the distinction between a judgment that might have been made in New Jersey where the corporation was present at its domicile, and one made [fol. 136] in New York where the company was present only because Federal bankruptcy proceedings were pending.

The foregoing error being plain, material and substantial, we respectfully request a consideration of the case by this Court upon the facts as they exist and not as erroneously assumed.

3

This court overlooked the fact that plaintiff-in-error sought to recover other indebtedness, "premiums", as well as "assessments". The general demurrer does not question the liability of various defendants for the other indebtedness. The trial court adjudicated the right to bring this action as one in equity, and there is as much reason for maintaining an equitable suit against a group of persons owing premiums as one against a group owing premiums and assessments. We believe this point was discussed in oral argument, but apparently it is not noticed in the briefs.

The indebtedness may be recovered on the prayer for general relief. Globe & Rutgers v. Salvation Army, 177 Ga. 890 at 898. And when the plaintiff is entitled to some recovery, a general demurrer may not be sustained.

4

This Court recognizes the general rule that a decree of a domiciliary court is binding upon stockholders, resident and non-resident, whether present or not, and that the same principle has been applied to mutual assessment insurance companies, but holds that "it is not necessary to decide whether the principle contended for is sound." If this is [fol. 137] premised upon the absence of the corporation, then the conclusion is sound. But if the corporation was present, then not only is a decision of the principle necessary, but a decision holding the policyholders liable follows as a matter of logic, law and morality. (See the authorities collected in Broderick v. Stephano, 171 A. 582, our brief p. 11-12.)

Plaintiff-in-error seasonably asserted and relied on a judgment of the domiciliary court that jurisdiction had been acquired. This Court does not determine the effect of this judgment, but the effect of its decision is to deny to it any force whatever.

This Court examines Howard v. Glenn, 85 Ga. 238, and holds that it is not conclusive on the question. It must have overlooked, because it certainly ignores what is held in the 3d head note:

"The corporation having been sued at the instance of creditors and duly served, the defendant in the present action was bound as a corporator by any proceedings in that case, although a citizen of another State, never served with process, did not appear, and had no notice until the institution of the present suit. * * *."

5

The Court overlooked the fundamental principles of mutual insurance in holding that the status of policyholders in a mutual insurance company could be decided by an interpretation of the company's agreement to insure, construed by the laws of the state in which the policy was issued. Cases cited by the Court as typical holdings that policyholders of a mutual insurance company may not be members (Opinion, p. 17) actually hold that every policyholder in a mutual insurance company is, by virtue of that fact, a [fol. 138] member of the company. Buck v. Ross, 240 N. W. 858; Greenlow v. Aroostock County Patrons' Mutual Fire Ins. Co., 105 Atl. 116. In both cases it is recognized that the liability of the company to the insured is entirely separate from the liability of the policyholder to the other policyholders and creditors as an insurer. To determine the extent of the second liability, resort must be had to the statutes of the state of incorporation, the charter and the by-laws of the Company. Buck v. Ross, supra 240 N. W. at page 860. Regardless of liability to assessment under the provisions of the charter and by-laws, all the cases hold that membership is a fundamental attribute to mutuality.

Short excerpts from the foregoing cases demonstrate the truth of our assertion. In the case of Buck v. Ross, the Court held:

"By these articles of association and the by-laws each policy holder becomes a member of the corporation, and

to that extent acts as both insurer and insured. * * * Each policyholder is entitled to his voice in the meetings of the company and to share in the profits as determined by the board of directors, whom he may have a voice in electing. These facts determine that this is a mutual company. Rosebraugh v. Tigard, 120 Or. 411, 252 P. 75; 32 C. J. 1018. The respondent contends that because this policy was not subject to assessment but provides for the payment of a cash premium, that the company loses its identity as a mutual company. This fact, however, is not contrary to mutual insurance. Davis v. Oshkosh Upholstery Co., 82 Wis. 488, 52 N. W. 661; Given v. Rettew, 162 Pa. 638, 29 A. 703."

And in the Greenlow case, the Court said:

"The statutes of the state relating to such corporations, the by-laws of the company, the contract, define the rights and *liabilities* of the member as a member. * * *."

Having overlooked the fact that the liability of the member to the company must be determined by the fundamental [fol. 139] law of the company—its charter, and the laws of the state of its domicile—the Court found no reference to the law of the state where the contract was made in plaintiff's petition, and concluded that, absent such allegations, the law of this state would be applied. The cases and principles cited are undoubtedly sound, but can have no application to a case of this nature, where, as has been held by the Supreme Court of the United States, the liability of all the policyholders is the same, and is determined by the law of the company's domicil, regardless of where the member joined. Modern Woodmen v. Mixer, 267 U. S. 544 (Our brief page 17), holds:

"* * * the act of becoming a member * * * is something more than a contract; it is entering into a complex and abiding relation * * *, *membership* looks to and must be governed by the law of the state granting the incorporation."

We do not understand the Court's reference to fraternal orders having a ritualistic system. If the Court intended to confine this rule to such fraternal orders only, then it erroneously limits a rule announced generally by the Supreme

Court of the United States. An examination of the cases cited in the Green case and the Mixer case indicates that the leading cases supporting this principle are not fraternal cases. In the Green case the court points out that the principle originated in a decision by Chief Justice Marshall in Head v. Providence Ins. Co., 2 Cranch 127, 167, 2 L. ed. 229, 242. The corporation "is a mere creature of the act to which it owes its existence * * *; it may correctly be said to be precisely what the incorporating act had made it, to derive all its powers from that act, and to be capable of exerting its faculties *only in the manner which the act authorizes*. To this source of its being we must recur to ascertain its powers."

[fol. 140] The mandate of the United States Supreme Court is "must". There is no choice for selection by this Court. It is equally bound to refer to the "source of its being" and that source is the charter and statutes of New York, fully set out in the pleadings. When this Court chose the Georgia law it overlooked the foregoing.

6

In holding that the laws of Georgia do not make a policyholder in a mutual company liable to assessment even though its charter and by-laws provide to the contrary, the Court has overlooked controlling statutes and decisions of this State. The Court cited a number of out of state cases, none of which are in point, but overlooked Code Sections 56-1401 and 56-1403, which provide:

"56-1401. Contract of mutual insurance, nature of.

The contract of insurance is sometimes upon the idea of mutuality, by which each of the insured becomes one of the insurers, * * * without a charter, such an organization would be governed by the general law of partnership; when incorporated, they are subject to the terms of their *charters*."

"56-1403 By-laws become part of policy.

The rules and regulations of a mutual company, adopted in pursuance of the charter, become a part of each policy, and all the insured are presumed to have notice thereof. * * * ".

This Court also overlooked the full bench decision in Alma Gin & Milling Co. v. Peeples, 145 Ga. 722, holding

that the omission of the by-laws of the company from the policy does not affect the right of the company to recover assessments in accordance with their provisions.

The Court overlooked the leading case in the United States on the law of mutual insurance. Carlton v. South-
[fol. 141] ern Mutual, 72 Ga. 371, which discusses in detail the controlling principles which govern this case.

The Court will doubtless be interested in two decisions, which, though not cited in our brief, construe the above code sections.

Hartford Steam Boiler Co. v. Harrison, 183 Ga. 1, s. c. 301 U. S. 459.

In the four opinions written in the Hartford Steam Boiler case, no judge questioned the basic premise stated by Mr. Justice Roberts that "the policyholders are the owners of the company and constitute its membership". Nor is the "general law" upon which the court bases its conclusions in accord with this Court's holding in the fifth headnote of its opinion.

As was concisely stated by the Wisconsin Supreme Court in Huber v. Martin, 115 Am. St. Rep. at page 1034,

"Proceeding logically, the next question to be taken up is this: Who were the members of the Germantown Farmers' Mutual Insurance Company at the time of the attempted reorganization? The law of its creation answers that most distinctly, if effect is to be given to the plain letter thereof. * * * with language so plain it seems useless to spend time endeavoring by construction to read some idea out of it not found in its letter. * * * The act is in harmony with elementary principles. If it were not for the emphatic declaration the result would be the same in the absence of some provision of the charter to the contrary. It is thus laid down by text-writers, based on authority: 'Membership dates in each case from the time when the insurance is effected'. * * * Am. & Eng. Ency of Law, 2d Ed. 264-266."

And since that decision was announced in 1907, every textbook and every court has been in agreement with the foregoing principle.

[fol. 142] 7

The major premise upon which the Court rests its decision is a person cannot be made a member or stockholder

of a corporation without his consent. 18 C. J. S. Sec. 478, Note 42.

As horn-book law, the rule is correct. When applied to a state of facts not compassed by this rule, it ceases to be an applicable rule of law. It becomes a will-of-the-wisp which can and did lead this Court away from a decision of the questions involved and the legal principles that control it.

That we are correct in the above will appear from an examination of any of the authorities cited in the note referred to.

In the first place, the rule announced a literary aphorism, not an accurate statement of law, and like many phrases attractive to the eye or ear, it is a half truth. The rule is more accurately stated by this Court in DeLoach v. Bennett, 156 Ga. 633.

"To constitute one a stockholder, some sort of subscription or contract is required, whereby the subscriber obtains the right, upon some condition, to demand stock and to exercise the rights of a stockholder. But it is not essential that a certificate should have issued, in order to create the relation of stockholder, provided a contract to take stock has been duly made, or *provided the rights, privileges and emoluments of a stockholder have been enjoyed, with the consent of the corporation.* A certificate of stock is authentic evidence of the title to stock, but it is not the stock itself, nor is it necessary to the existence of the stock."

When the legal rule of law is applied to the facts in this record, the membership of these policyholders in the company cannot be questioned. Courts judicially know facts of general acceptance. Neither allegation nor proof is necessary to inform the Court that insurance in mutual [fol. 143] companies is accepted because it is cheaper than stock companies. The very nature of the relationship leads to profits on some occasions and the possibility of loss by assessment on others. The Court is clearly in error in assuming that the burden is on the plaintiff-in-error to prove more than a voluntary relationship between the policyholder and the company. The policy informed him that it was a mutual company and that he might share in the profits. The law informed him that he might be liable for the losses.

In another division of this motion, we have demonstrated the error of this Court in assuming that policyholders do

not enter the relationship of members in a mutual company by reason of the acceptance of a policy providing for a single cash premium, the absence of assessable provisions in their policy or the fact that they joined the Company in a state other than its domicile.

Status once established remains for many purposes and whether it existed cannot be determined by reasoning from event to cause. Logic and law demand reasoning from cause to event. If a court should deny the petition of a married woman for alimony because of her misconduct, would this adjudication of misconduct determine that she did not occupy the status of a widow for the purpose of measuring her rights of inheritance? Certainly not. If she was a wife in life, she is the widow when death ensues. One who accepted a policy in a mutual company is a member though insolvency has set in and instead of expected fruit of dividend, he is faced with the burden of assessment.

Great Western Telegraph Co. v. Purdy, 162 U. S. 329, cited by the Court as authority for the rulings above discussed, holds exactly the contrary. Indeed, the appeal was [fol. 144] allowed by the Supreme Court of the United States because the Iowa court erroneously followed the line of reasoning adopted by this court. As that great Court poses the question, "The question, therefore, is of the effect, as against Purdy, of the order for an assessment made by the Illinois court in a proceeding to which the corporation was a party, but to which he personally was not."

Can there be a more accurate statement of the facts in this record? The Court must agree that the cases are identical. So considering the matter, we are at a loss to understand how the Court cited the Purdy case as an authority in support of its decision when in the very face of its decision, it holds the very opposite. The Supreme Court of the United States in the Purdy case, said:

"The order of assessment * * * unless directly attacked and set aside by appropriate judicial proceeding, is conclusive evidence of the necessity for making such an assessment and to that extent bound every stockholder without personal notice to him."

Had the Supreme Court of Georgia decided the instant case by differing with us on debatable rules of law, this motion would never have been filed, but when the Court cites as its authority a decision of the United States Su-

preme Court which holds exactly the opposite of the contentions advanced, we feel that justice to our client and to the Court demands that we put our finger on the spot and present it to the court for its further consideration.

New York Life Ins. Co. v. Street, 265 S. W. 397, and Lee v. Missouri State Life Ins. Co., 238 S. W. 858, cited by the Court in support of the rule, not only fail to support it but [fol. 145] they are not applicable.

In the Street case the court was passing on the liability of the insurer to the policyholder, the first phase of the contract, and not the second phase which is here involved. This court overlooked the fact that this is a decision by an intermediate court, holding that an insurance company, whose name and policy contained no hint of mutuality, cannot, in equity, obtain a reformation of the contract under the facts there existing. Language torn from its context may support the proposition announced by the Court, but the decision as a whole certainly does not do so.

The Lee case not only is inapplicable, but it has been specifically reversed by name. See Lee v. Missouri State Life Ins. Co., 261 S. W. page 83. Indeed, the opinion cited by this Court as authority contains internal evidence that it would be certified and had the court followed this reference, the reversal would have been apparent.

8

Pink, Superintendent v. Georgia Stages, Inc., 35 Fed. Supp. 437, is not a parallel case.

There the Court considered as material, proof that the company had $100,000.00 capital and therefore came within the exceptional status defined by Georgia law. While we believe this was error, yet this exception removes the case as an authority. There is no such proof in the present record.

[fol. 146] When the Georgia Stages case was tried, a binding authority in New York holding that mutual casualty companies there chartered were limited to the issuance of assessable policies was not available. That Court so bottoms its decision. In this case we have cited the controlling authority, Factory Mutual Liability Ins. Co. v. Behan, 253 N. Y. S. 562. A motion for new trial is pending in the Georgia Stages case and if it is not granted, an appeal will be taken.

Conclusion

Plaintiff-in-error earnestly submits his plea for a rehearing on the grounds heretofore stated. In doing so he has no selfish personal interest to serve. As an official of the state of the domicile, the right and duty of collecting assessments is placed upon him and if he fails to discharge this duty, many persons will suffer.

That many of the defendants in error are public carriers will appear from their name and the amount of their premiums. Many members of the public have claims which the defendants-in-error insured against. Whether the defendants-in-error have paid these claims and will seek reimbursement from the New York fund, or whether the members of the public will make claim against the fund is immaterial. The assessment is for the benefit of creditors.

"* * * an assessment which was one thing in one state and another in another, and a fund which was distributed by one rule in one state and by a different rule somewhere else, would in practical effect amount to no assessment and no substantial sum would be distributed."

Supreme Council Royal Arcanum v. Green, L. R. A. 1916(A) p. 777.

[fol. 147] It appears from the discussion in the case of Pink v. Georgia Stages, 35 Federal Supp. 437, supra, and in the report of the New York proceedings, 14 N. Y. Supp. (2) 601, that policyholders reside in many states. The case in this court is the first to reach an appellate tribunal and its effect will be far reaching.

We realize quite well that if this court has decided the case correctly, then it ought to be followed by other courts and the disappointment of creditors is not chargeable to this plaintiff-in-error. But when a comparison of the grounds which actuated the Court's conclusion discloses them to be identical with the grounds advanced by the Court of Appeals of New York in Supreme Council Royal Arcanum v. Green, supra, and by the Supreme Court of Missouri in Bolin v. Sovereign Camp, W. O. W., 112 S. W. (2) 582, we must conclude that this Court did not fully consider the reversal of the cases discussed by the Supreme Court of the United States. Both of these courts premised their judgment on the fact that "the contract and all its essentials between the parties was entered into, made and

completed in the State of New York (Missouri), and that the charter and statutes of the home state were not material".

In the face of such clear repudiation of these principles by the United States Supreme Court, the plaintiff-in-error asserts that they should be discarded by the State court to whom he appeals for relief.

If the Court should deem the case artificially stated in a matter that can be cured by an amendment to the pleadings, then the judgment sustaining the general demurrer [fol. 148] should be reversed and the case returned with direction; this Court should not deprive creditors of the opportunity to recover the fund which plaintiff-in-error seeks in their behalf. They have not had their day in Court when their claims for relief have not been considered.

Respectfully submitted, Elliott Goldstein, Powell, Goldstein, Frazer & Murphy, Attorneys for Plaintiff-in-error. Powell, Goldstein, Frazer & Murphy, Elliott Goldstein, 1130 C & S Bank Bldg., Atlanta, Georgia.

[Fi' endorsement omitted.]

[fol. 149] IN SUPREME COURT OF GEORGIA

L. H. PINK, Superintendent of Insurance of New York,

v.

A. A. A. HIGHWAY EXPRESS, INC., et al.

ORDER DENYING MOTION FOR REHEARING—February 14, 1941

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

* * * * * * *

[fol. 150] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 151] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 26, 1941

The petition for a writ of certiorari to the Supreme Court of the State of Georgia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 932

LOUIS H. PINK, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK,

Petitioner,

vs.

A. A. HIGHWAY EXPRESS, INC.; H. A. ADAMS, TRADING AS ADAMS TRANSFER CO.; H. L. BASS, AS BASS BUS LINE; SERVICE COACH LINE, INC., EAST & WEST MOTOR LINES, ROY R. REAGIN, GEORGIA MOTOR EXPRESS, INC., S. S. SALE, SALE TRANSFER CO., SOUTH EASTERN STAGES, INC., EVERREADY CAB COMPANY, J. H. BOOKER, D. B. A. SAVANNAH BEACH LINE AND OR ATLANTIC STAGES; FLETCHER T. KAYLOR, D. B. A. KAYLOR TRANSFER CO.; J. F. MURRAY, D. B. A. GEORGIA ALABAMA COACH LINE; KALER PRODUCE COMPANY, COX BROS. UNDERTAKING CO., INC., ATLANTA MACON MOTOR EXPRESS, INC., SOUTHEASTERN MOTOR LINES, INC., AND OR CEDARTOWN BUS LINE; J. RUSSELL, D. B. A. RUSSELL TRANSFER CO., CONTINENTAL CARRIERS, INC., BATEMAN COMPANY, INC., DOWNIE BROTHERS CIRCUS, KINNETT ODOM COMPANY, INC., SOUTHERN STAGES, INC., WEATHERS BROS. TRANSFER CO., INC., M. & A. MOTOR FREIGHT LINES, INC.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA AND BRIEF IN SUPPORT THEREOF.

ELLIOTT GOLDSTEIN,
MAX F. GOLDSTEIN,
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ARTHUR G. POWELL,
BURKETT D. MURPHY,
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INDEX.

Subject Index.

Table of Cases Cited.